83 - 1824

No. ____

In The

Supreme Court of the United States

October Term, 1983

UNITED STATES OF AMERICA,

Appellee

VS.

MELVIN R. JENNINGS,

Appellant

JURISDICTIONAL STATEMENT FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES, FROM A JUDGMENT OF THE FIFTH CIRCUIT COURT OF APPEALS OF THE UNITED STATES

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Attorney for Appellant

QUESTIONS PRESENTED

(1) Whether the United States Supreme Court's power of supervision should be invoked in this case to assure that the Fifth Circuit Court of Appeals allow the Appellant equal protection of the law by ruling consistently with prior decisions of the Fifth Circuit.

(2) Whether the fines imposed on the Appellant by the District Court were excessive, when the alledged proof showed in the Petition for Rehearing only $19.12 allegedly obtained from the U.S.A. by the Appellant.

(3) Whether the Appellant is entitled to a clear and non-contradicting opinion from the Fifth Circuit as to summary charts being voluminous and requiring and expert, and simultaneously ruling that the preparer of the summary chart, though not an expert was qualified to testify on the summary charts.

(4) Whether the Appellant was entitled to have the terms of the U.S.D.A. contract between the State of Mississippi and the Appellant adhered to by the contracting parties, prior to criminal proceedings being instituted against Appellant.

(5) Whether the Appellant was subject to an indictment under 18 USCA 287, when no money was established as lost by the U.S. Government or any agency thereof prior to indictment.

(6) Whether Appellant was denied Due Process when the trial judge ruled that FRE 606(b) precluded the court from considering the published statements by two jurors that the verdict in the Appellant case was not unanimous.

(7) Whether Appellant was denied Due Process when he was suspended from the practice of law without a hearing simply because the same judge conducting the trial also did the suspending, while never informing the Appellant that his defense of the indictment was also his defense of his licence, or that Appellant was burdened with a dual burden of defense at his trial.

(8) Whether the Appellant was entitled to be informed by the U.S.D.A. investigator that Appellant was suspected of criminal activity, even though the U.S.D.A. has a policy of not informing suspects that they are criminal suspects, while being audited.

(9) Whether the Appellant was denied a fair trial following the U.S. Attorney's failure to obey the court orders of Discovery.

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In The

Supreme Court of the United States

October Term, 1983

No. _____

UNITED STATES OF AMERICA,

Appellee

VS.

No. 8304426

MELVIN R. JENNINGS,

Appellant

JURISDICTIONAL STATEMENT FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES, FROM A JUDGMENT OF THE FIFTH CIRCUIT COURT OF APPEALS OF THE UNITED STATES

ENTRANCE OF APPEARANCE

Please take notice that Eddie H. Tucker, Attorney At Law, enters his appearance on behalf of the Defendant-Appellant in the above styled and numbered cause.

SUBSCRIBED on this the 7th day of May, 1984

Eddie H. Tucker

EDDIE H. TUCKER
Attorney for Appellant
P. O. Box 2169
Jackson, Mississippi 39205-2169
(601) 948-1120

CERTIFICATE PROOF OF SERVICE

I, EDDIE H. TUCKER hereby certify that I have this day mailed, postage prepaid in the main Post Office at Jackson, Mississippi three (3) of the above and foregoing Jurisdictional Statements to the Honorable Rex E. Lee, Solicitor General, Department of Justice, Washington, D.C. 20530 by first class mail within the time allowed for filing, and that to my knowledge the mailing took place on the 7th day of may, 1984 within the permitted time.

All the parties required to be served have been served and the said party is the Honorable Rex E. Lee, Solicitor General, Department of Justice, Washington, D.C. 20530.

SUBSCRIBED on this the 7th day of May, 1984.

Eddie H. Tucker

EDDIE H. TUCKER
Attorney for Appellant

STATE OF MISSISSIPPI
COUNTY OF HINDS

SWORN TO AND SUBSCRIBED before me on this the 7th day of May, 1984.

James M. Abram
NOTARY PUBLIC

MY COMMISSION EXPIRES:

7-14-85

In The

Supreme Court of the United States

UNITED STATES OF AMERICA,

Appellee

VS.

No. 83-4426

MELVIN R. JENNINGS,

Appellant

CERTIFICATE OF INTEREST

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Judges of this Court may evaluate possible disqualification or recusal.

1. Melvin R. Jennings

Attorney of record for Defendant Eddie H. Tucker

EDDIE H. TUCKER

In The

Supreme Court of the United States

October Term, 1983

MELVIN R. JENNINGS,

Appellant

No. 83-4226

VS.

UNITED STATES OF AMERICA

Appellee

JURISDICTIONAL STATEMENT

OFFICIAL AND UNOFFICIAL REPORTS

The unreported sentencing, fines, and suspension of the Appellant's license to practice in the Federal Courts and the freezing of all assets of the Appellant and refusing to allow the interviewing of jurors by the Honorable William H. Barbour, U.S. District Judge, appears in Appendix B, *infra*.. The Opinion of the fifth Circuit Court of Appeals is reported in Fed 2nd, and appears in Appendix A, *infra*. The Petition For Rehearing appears in Appendix C, *infra*. The Order Denying Petition for Rehearing appears in Appendix D, *infra*. the Order Refusing to Recall the Case and granting the Motion to Stay the Mandate following the Fifth Circuit Court of Appeals losing the Motion to Stay the Mandate appears in Appendix E, *infra*.

STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOLVED

The Nature of the Proceding

The Appellant was indicted on 12 counts of submitting false claims to the United States Government, via the United States Department of Agriculture. The jury deliberated for approximately eight hours the first day, was sequestered, and deliberated for approximately six hours on the second day. The jury sent out three notes to the judge seeking information not in evidence, seeking to know "whether they should rule on each count separately," and "that they could not agree on a verdict." On the fourth hour of the second day the court gave its personal version of the Allen Charge, as opposed to the Fifth Circuit Court of Appeals approved version of the Allen Charge. (Nordmann vs. National Hotel Company, 5th Cir., 1970 425 F.2d 1104). The Jury then returned a verdict of eight counts innocent, an four counts guilty. (see Appendix D, *infra.*)

STATUTORY PROVISION BELIEVED TO CONFER ON THIS COURT'S JURISDICTION OF THE APPEAL

Jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(I) and Rule 19(b) of the Rules of the Supreme Court of the United States governing this court's power of supervision.

Dates

The judgment of the Fifth Circuit Court of Appeals was entered on January 24, 1984. The date of the Order respecting rehearing is February 29, 1984. The date of the Order Denying Recall and Staying the Mandate is March 26, 1984. The date the Notice of Appeal was filed is March 12, 1984 in the United States Court of Appeal, Fifth Circuit.

CONSTITUTIONAL PROVISIONS, STATUTES, RULES AND REGULATIONS INVOLVED

UNITED STATES CONSTITUTION

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any Criminal Case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and District wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defense.

Amendment VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment XIV

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

FEDERAL RULES OF EVIDENCE

Rule 606. Competency of Juror as Witness.

(b) Inquiry into validity of a verdict or indictment. — Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon his or any other juror's mind or emotions as influencing him to assent to or dissent from the verdict or indictment or concerning his mental processes in connection therewith, except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror. Nor may his affidavit or evidence of any statement by him concerning a matter about which he would be precluded from testifying be received for these purposes.

FEDERAL RULES OF EVIDENCE

Rule 1006. Summaries.

The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at reasonable time and place. The court may order that they be produced in court.

UNITED STATES CODE ANNOTATED, TITLE 18

§ 287. False, fictitious or fradulent claims

Whoever makes or presents to any person or officer in the civil, military, or naval service of the United States, or to any department or agency thereof, any claim upon or against the United States, or any department or agency thereof, knowing such claim to be false, fictitious, or fraudulent, shall be fined not more than $10,000 or imprisoned not more than five years, or both. June 35, 1948, c. 645, 62 Stat. 698.

UNITED STATES CODE ANNOTATED, TITLE 42

1776. Child care food program

Authorization of appropriations

(a) (1) There is hereby authorized to be appropriated such sums as are necessary for the fiscal year ending June 30, 1976, the period July 1, 1976, through September 30, 1976, the fiscal year ending September 30, 1977, and the fiscal year ending September 30, 1978, to enable the Secretary to formulate and carry out a program to assist States through grants-in-aid and other means to initiate, maintain, or expand nonprofit food service programs for children in institutions providing child care.

(2) For purposes of this section, the term "institution" means any public or private nonprofit organization where children are not maintained in permanent residence including, but not limited to, day care centers, settlement houses, recreation centers, family day care programs, Head Start centers, Homestart programs, and institutions providing day care services for handicapped children. No institution shall be eligible to participate in this program unless it has either local, State, or Federal licensing or approval as a child care institution, or can satisfy the Secretary that its standards are no less comprehensive than the Federal interagency day care requirements as approved by the Department of health, Education, and Welfare, the Office of Economic Opportunity, and the Department of Labor on September 23, 1968. An institution may be approved for funding under this section only if, under conditions established by the Secretary, such institution is moving toward compliance with the requirements for tax exempt status under section 501 (c)(3) of Title 26, or is currently operating a

federally funded program requiring nonprofit status. For purposes of this section, the term "State" means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands. Any eligible institution shall receive the child care food program upon its request.

STATEMENT OF THE CASE

This case resulted from a 12 count indictment against the Appellant for alledged violations of 18 USC, Section 287. The Appellant was found innocent of eight (8) counts and guilty of four (4) counts. (Appendix B).

During the trial the government's proof, which consisted of conflicting testimony by government witnesses, was to support testimony by the governments alleged expert witness in presenting summary charts that purportedly represented voluminous documents. The charts were filled with inconsistencies, inaccuracies and was without clarity. (Appendix C). The evidence presented by the government was not sufficient to stand alone and should not have warranted a guilty verdict on counts 2, 4, 8 and 12. (Appendix A and C).

The Government's expert witness, initiated an investigation in to the Appellant's records under the "guise" that it was merely an audit pursuant to 42 U.S.C. 1766 when it was in fact a criminal investigation. (Appendix C). The investigator testified that he did not inform Appellant that he was a suspect because the Appellant was an attorney, and further that it was U.S.D.A.'s policy to not inform suspects during audits. (Appendix C).

U.S.D.A. regulations resulting from 42 USC 1766 clearly states criteria for repayment of overclaims. (Appendix C). This procedure was by-passed by the government. The Appellant was indicted as opposed to being asked to repay money overclaimed, if any.

The Appellant opposed the prosecutor's assertion that the documents were voluminous and did require the use of summary charts. (Appendices A and C).

The opinion of the Fifth Circuit (Appendix A) states that the Appellant was convicted on counts 2 and 4 because of the handwritten support documents signed by the Appellant; count 8 was supposedly substantiated by the Appellant's expert witness which showed a minute arithmetic error of 4 meals (Appendix B); count 12 was alledgedly supported by the testimony of an employee of the Appellant who produced menus for this particular count which did not coincide with the figures reported by the Appellant or the same employee earlier or by the same employee's testimony. (Appendices B and C). The defendant has surmised that his guilt on these four counts were not proven beyond a reasonable doubt, and that evidence such as this should not sustain guilty verdicts, and certainly does not warrant 5 years without freedom and a $7,500.00 fine for each count ($30,000.00 total).

This case was turned over to the jury after eight days of deliberation. The jury deliberated for several hours and then requested a rereading of the law as to "reasonable doubt and witness." The judge re-read the instructions. The jury returned and deliberated for several more hours and returned once again with a second note which dealt with the handling of the individual counts in the indictment and returning verdicts on those. The Appellant was charged with 12 distinct indictments that were summarized by charts prepared by a government witness. The jurors questioned whether this was one indictment rather than twelve. (Appendix C).

After the instructions were re-read a second time, the jury returned to deliberate. The judge received a third note from the jury stating that "Judge, we, the jury, cannot reach agreement on any of the twelve counts." (Appendix C).

The judge then gave the jury his version of the Allen Charge, which had no connection with the facts or the law in this case, but was introduced as a new instruction, and therefore additional law for the jury to consider. (Appendix A and C).

The defendant was sentenced to five years, with six (6) months being served. The execution of the remainder of the sentence of imprisonment was suspended and the defendant placed on probation for a period of five (5) years to commence upon the defend-

nat's release from confinement, and pay a fine in the sum of $7,500.00 for count 2. (Appendix B).

The Appellant filed a Motion to Interview Jurors, because of articles printed by the newspaper, and because he needed to determine if he was a victim of irregularity and injustice. (Appendix B-3).

This Motion to Intereview Jurors was denied because of Federal Rules of Evidence 606 B. (Appendix B, pages 4-9).

In order that the Court might obtain its imposed fine of $30,000.00, an order was issued to freeze all the Appellant's assets.

The Appellant filed a Motion to Release all the Assets except those amounting to the $30,000.00 imposed by the Court. This motion was granted.

Appellant appealed the lower court's decision to the Fifth Circuit Court of Appeals, who in turn returned a lengthy opinion, filled with mis-statements of the facts, and inconsistencies, which also affirmed the lower court. (Appendix A). A Petition for Rehearing (Appendix C) was filed in the Fifth Circuit Court of Appeals by the Appellant and it was also denied without comment. (Appendix D). Appellant filed a Motion to Stay the Mandate which was misfiled or lost by the Fifth Circuit Court of Appeals. (Appendix E). The Appellant then filed a Motion to Recall and Stay the Mandate. The Motion to Recall was denied and the Motion to Stay the Mandate was granted pending the submission of the Petition for Writ of Certiorari. (Appendix E).

Counts 4, 8, and 12's sentence was suspended and the Appellant was placed on probation for a period of five years concurrent with the probation imposed in count 2, and pays a fine in the sum of $7,500.00 on each of these three counts, totaling $30,000.00 (Appendix B).

These fines of $30,000.00 is excessive and cruel and unusual punishment, especially when there was no establishment by the government of any money being defrauded.

After invoking a sentence as harsh as the above mentioned sentence for an undetermined amount of money presumed to be defrauded, the Court proceeded to suspend the Appellant from

practicing law (Appendix B) even though the State of Mississippi did not consider violation of 18 U.S.C. 287, a crime of moral turpitude. (Appendix C).

After the trial, the Jackson Advocate Newspaper interviewed two of the jurors and reported that the jury verdict was not unanimous. (Appendix B). The jurors reported that they used a democratic system of voting because of their inability to reach a verdict based on the evidence presented by the prosecution and the court's insistance that they reach a verdict. (Appendix C, Exhibit E).

A Notice of Appeal (Appendix F) has been timely filed and following the Notice of Appeal, Appellant filed a Motion for En Banc Consideration by the Fifth Circuit Court of Appeals of the Order denying recalling the case. The court, without an Order, returned the motion without filing the Motion and stated in a cover letter that this Court did not consider administrative matters En Banc.

The Appellant's attorney has informed the court that the Motion was procedural and not administrative. The Fifth Circuit has not replied to that communication.

STATEMENT OF THE REASONS WHY THE QUESTIONS PRESENTED ARE SO SUBSTANTIAL AS TO REQUIRE PLENARY CONSIDERATION

1.

Question No. 1 is presented for the following reasons:

In the instant case, the opinion rendered by the Fifth Circuit Court of Appeals, directly conflicts with the following cases and authorities issued or used by the Fifth Circuit Court of Appeals:

(1) **Baines v. United States of America,** 5th Circuit 1970, 426 F 2d 842.8

(2) **Nordamann v. National Hotel Company,** 5th Circuit, 1970, 425 F 2d 1104

(3) **United States v. Meriwether,** 486 F. 2d 498 (5th Circuit, 1973) **cert. denied,** 417 U.S. 948, 94 S. Ct 3074, 41 L. Ed. 2d 668 (1974)

(4) **Gordan v. United States**, 438 F. 2d 858, 976 (5th Cir. 1971), **cert. denied**, 404 U.S. 828, 92 S. ct. 63, 30 L. Ed. 2d 56 (1971).
(5) Federal Rules of Evidence, Rule 1006

The resulting fact is that the opinion created new case law which conflicts with existing case law established by the Fifth Circuit, i.e., the summary charts used by the prosecution and presented by an alledged expert witness did not meet the threshold requirment of Rule 1006, FRE. These charts, not in accord with this rule (1006), (1) did not contain facts and figures supported by evidence; (2) they did not reflect such facts and figures in a neutral fashion as is required, but instead attempted to interpret such facts and figures to fit the government's theory of the case; (3) drew conclusions of facts and law, which not only invaded the province of the jury, but were in fact pre-emptive in nature; and (4) the conclusions drawn were based on averages and probabilities. Because of the above mentioned statements of fact, the Appellant, like the Baines v. United States of America case, (5th Circuit, 1970, 426 F. 2d 842.8), requested that this case be reversed and remanded. The use of the summary charts in the instant case and *Baines v. United States, supra,* were highly prejudicial to the defendants. The Fifth Circuit Court of Appeals reversed and remanded the Baines case and the same court affirmed the lower court's decision in the Jennings case.

It is for the above reasons that the Appellant has requested this court to grant the Writ of Certiorari so that precedents be retained uniformly, and that the Appellant might be afforded equal protection of the law, as is his constitutional right via the 14th Amendment.

2.

Question No. 2 is presented for the following reasons:

In considering Amendment 8 of the U.S. Constitution, "an excessive sentence may be invalid under this amendment solely because of disproportionality" (Wheeler v. Glass, C.A. Ill. 1973, 473 F. 2d 983) (McGee v. Schmidt, D.C. Wis., 1976, 411 F. Supp. 43). This disproportionate punishment inflicted upon Appellant is considered cruel and unusual by the Appellant and violative

of his 8th Amendment Constitutional right because it is not graduated or proportioned to the offense, expecially when there have been similar cases in the same jurisdiction for the same offense with much more lenient sentences or fines, i.e., U.S. vs. Edgar C. Lloyd, Jr., Fd. 2nd, former top advisor to Governor Cliff Finch and former director of the State Employment Security Commission who embezzled $216,000.00 from the Government. He received a 20-month sentence with a $3,000.00 fine; whereas, Jennings received a 6-month sentence with a $30,000.00 fine for alledgely submitting false claims, although no amount of money was determined to be missing by the court or the indictment. For this court to allow a precedent to be set as disproportionate as in this case would lay a foundation for the taking of property without a hearing; create involuntary servitude for the government; sanction a legal technique for cruel and inhuman treatment; and encourage similar disproportionate fines against our citizenry. For these substantial reasons, the Writ of Certiorari should be granted.

3.

Question No. 3 is presented for the following reasons:

It is evident that the opinion rendered is vague and unclear as to certain aspects of the case.

It is unclear, as to the lower court's need for summary charts, presumably based on voluminous records, and also if the witness used to make these summary charts should have been an expert, and further, should these charts have been ascertained by the court with certainty that they were based upon and fairly represented competent evidence already before the jury, and that this witness was an unbiased one. (Gordon v. U.S., 438 F. 2d 858, 876 (5th Circuit 1971), **cert. denied**, 404 U.S. 828, 92 S. ct. 63, 30 L. Ed. 2d 56 (1971). These issues are crucial to the Appellant in that his conviction was centered primarily on the summary charts.

In the instant case a precedent is being set that identifies by number the pages required to make a subject matter voluminous and therefore needing summary charts. The precedent states 200 plus pages. The fact is that only 59 pages existed in this case. This case attempts to honor the requirement of an expert, while

simultaneously establishing as law that the chart preparer, acknowledged by the court as not an expert, was qualified to prepare and testify from, and change three (3) times during his testimony, summary charts. This precedent has broad effects on summary charts, expert witnesses, voluminous records, and is repugnant to the Federal Rules of Evidence, rule 1006.

The issues raised in this case on this subject is substantial and far-reaching enough to justify this court granting the Writ of Certiorari that this Court might constitutionally consider the final stamp of approval or disapproval of the precedents being set by this case.

4.

Question No. 4 is presented for the following reasons:

Under the terms of the contract between the Appellant and the Department of Education, it clearly states in the Federal Register/vol. 45, no. 14, 1980 Rules and Regulations 228.15, that "the State Agency shall notify the institution of reasons for any disallowance or demand for repayment, and allow the institution full opportunity to submit evidence on appeal as provided for in § 226.7. Minimum State Agency collection procedures for unearned payments shall include: (1) written demand to the institution for the return of improper payments; (2) if, after 30 callendar days, the institution fails to remit full payments or agree to a satisfactory repayment schedule a second written demand for the return of improper payments is made; (3) if, after 60 days, the institution fails to remit full payment or agree to a schedule, the State Agency will then and only then refer the claim to the appropriate state or federal authorities for pursuit of legal remedies."

The State Agency failed to comply with the guidelines established by congress governing overpayments or repayments to the U.S. Department of Agriculture and agreed upon between the four (4) contracting parties.

This court should establish as law prohibition of criminal prosecution of offenses such as this, prior to the full enforcement of government contractural agreements. Government Agencies should concur with every aspect of the agreements and exhaust

every measure of resolution above and beyond that of any contract before criminal procedures are invoked. For this court to allow this ruling to stand, is to sanction criminal prosecution where no restitution is requested per contract; to flood the Federal Courts with criminal cases; to add to the jail population and to encourage excessive fines. This court should not establish as law a method of proceeding against individials contracting with the government, which would be discretionary with local prosecutors, and contrary to the congressional intent of the legislature establishing the programs that lead to the government contracting with an individual. A most grave precedent is being established in the instant case, which if allowed to stand, would have far reaching effect upon many vast areas of existing law, which will surely errode the constitutionally protected rights of individuals, and cause congress to cry encroachment of powers by the courts. For this reason, the Writ of Certiorari should be granted.

5.

Question No. 5 is presented for the following reasons.

In the instant case, a civil contract was entered into between the U.S. Government and the State of Mississippi and a private non-profit corporation and the appellant. It was a U.S.D.A. contract for the feeding of pre-school age children in a child care center. The contract was all inclusive of disbursements, overpayments, reclaiming overpayments, and by whom, which in this case simply progressed backwards, and ultimately would be the responsibility of the U.S. Government when all else failed as to collections. The collection provisions of the U.S.D.A. regulation and therefore the contract states the collection of money. In this case, the Appellant was indicted under 18 USC 287, even though no money, not even one dollar, was ever alleged to have been taken by the Appellant from the U.S. Government. Surely it is difficult to conceive of a Federal District in our United States of America that could convince a Federal Grand Jury to return an indictment considering these circumstances; but it did happen in this case, and the vehicle was 18 USC 287, i.e., the knowing and intentionally submitting a false claim to the Government. The words "False Claim" implies that one intends to get something from the Government that he is not entitled to. In this case, an

indictment was rendered because somebody believed that the Appellant intended to submit a false claim to the government. Not that the Appellant did, but only intended to do so. The scenario of this case creates 18 USC 287 as a weapon for prosecutors. This court should carefully consider this entire case, and resulting therefrom establish specific guidelines which ought to conclude that a false claim must actually be sumbitted before an indictment may be sought under 18 USC 287. Because these guidelines suggested do not already exist, the Appellant has been branded a criminal via indictment, with the prosecutor having the privilege to "witch hunt" for supporting evidence after the indictment. The evidence in this case is so close to being non-existing, that even the Circuit Court so stated in its opinion. 18 USC 287 apparently is being used as a "catch-all" statute. That is to say, "if we can not get him one way, we'll get him under 18 USC 287". This Court should establish as clear law that 18 USC 287 is not to be used in factual situations as enumerated in this case. For to do otherwise, is to ordain unimaginable chaos. For this reason, the Writ of Certiorari should be granted.

6.

Question No. 6 is presented for the following reasons:

The verdict of guilty on four counts and an acquittal of eight counts was delivered by the jury. The verdicts were unorthodox. Two of the jurors reported in published interviews that the verdicts were not unanimous. They indicated a democratic system of voting, due to the coercive effect of the Allen Charge imposed by the Court. It is the Appellant's position that allowing verdicts to be beyond reach as indicated by FRE 606B, only promote injustice. Guidelines should be established by the United States Supreme Court in regard to FRE 606B, especially in instances as flagrant and insulting to the basic principle of a unanimous verdict, as in this case. This court must not allow a standard of less than unamious verdicts to be the new law. For this reason the Writ of Certiorari should be granted.

7.

Question No. 7 is presented for the following reasons:

The Appellant was summarily suspended by the trial judge at sentencing as a part of the sentence imposed against him, from practicing law in all Federal Courts of the Southern District of Mississippi. **In the matter of William R. Ming,** 469 F. 2d 352 (CA 7, 1972) and United States vs. Friedland, 502 F. Supp. 611 (DGNJ, 1980), affirmed 672 F. 2d 905 (1981) is considered by the Appellant to be of exceptional importance. In the **Ming** case, the defendant was indicted and charged with four counts of willfully and knowingly failing to make timely income tax returns. The defendant was also a practicing attorney and was found guilty on all four counts. Following his conviction he was also suspended from practicing law. The Seventh Circuit Court of Appeals ruled that "without reaching the merits of the suspension, we reverse for two reasons: (1) the suspension for conviction of a misdemeanor took place before the conviction had reached finality; (2) the lack of hearing before the executive committee constituted a denial of due process of the law," and it is only fair and just that the government not subject any person to such a drastic divestment without affording him substantial due process of law.

This Seventh Circuit decision is supported by the case of In re Ruffalo, 390 U.S. 544, 88 S. Ct. 1222, 20 L.Ed. 2nd 117 (1968), wherein the Supreme Court upheld that "disbarment, designed to protect the public, is a punishment or penalty imposed on lawyers. Appellant is accordingly entitled to procedural due process.

The case, however, holds that an attorney may be suspended while he is in an appeal and before his conviction reaches finality. However, it is most important to note that even in the **Friedland** case, the attorney was granted a due process hearing prior to being suspended. Friedland does not argue against procedural due process, but in fact reinforces the right to due process, which is recognized by all Federal Appellant Courts.

In the instant case, not only was the Appellant suspended while his case was on appeal, but the district court denied him a hearing. Accordingly, Appellant submits that the most enlightened

position for the Supreme Court to take on this issue, which is a case of first impression for the Fifth Circuit, is to adopt the holding in **Ming.**

In the instant case the Fifth Circuit has established as law that a trial judge may suspend an attorney following a guilty verdict without a hearing as long as no hearing was requested by counsel for the accused. The opinion in this case leaves open, the question of whether or not the accused would have been entitled to a hearing on his suspension if one had been requested. This opinion further establishes as law that the accused defending an indictment must also defend a suspension simultaneously although the accused is never informed that his defense at the trial is also to be his defense for suspension consideration.

This opinion places a dual burden on the accused attorney during the trial on defending his license and the indictment. The Writ of Certiorari should be granted that this court might make clear its position on due process hearings when not requested by oversite of counsel. This particular question is of grave public importance and substantial and should be considered by this Court. For this reason, leave to file a Writ of Certiorari should be granted.

The instant case is a case of first impressions of the Fifth Circuit Court of Appeals as to suspension of an attorney without a due process hearing. The Fifth Circuit has ruled contrary to other federal circuits. The U.S. Supreme Court should ratify or correct the ruling of the Fifth Circuit in this case of first impression, and establish timely procedures and criteria for suspending attorneys pending appeals and same for the disbarment of attorneys, and define with specificity the distinctions between disbarment and suspension.

8.

Question No. 8 is presented for the following reasons:

The Appellant being the attorney for the non-profit corporation, was under obligation to make available its records for civil audits. The original auditor, admitted that he obtained records from the appellant under the guise of conducting a civil audit and later turned those records over to a U.S.D.A. Investigator. The investigator admitted that at no time did he inform the Ap-

pellant that he was the subject of a criminal investigation or that the records which he obtained would be used against him as evidence in a subsequent grand jury proceeding and trial. In fact, the cirminal investigator admitted that even after the grand jury was convened and the case was presented to the grand jury, he returned to the Appellant's office and seized additional records and turned them over to the United States Attorney. He further testified that he did not inform the Appellant that he was a criminal suspect or that he was conducting a criminal investigation "because he is an attorney, and if he had done something wrong he would have known that it was a criminal investigation". The investigator testified further that "it is the policy of U.S.D.A. to not inform suspects of criminal investigations because in so informing them it tends to cause non-cooperation with the government by the suspect."

The Appellant cites the case as **United States** vs. **Tweel,** 550 F. 2d 297 (CA5, 1977), which reveals that the defendant was tried on two counts of tax evasion and evidence used against him was obtained by a special agent under false pretense. The agents in both cases used deceit, trickery, and misrepresentations to gain access, and, thus violated the defendant's constitutional right against unlawful search and seizures, which is in direct violation with the Fourth Amendment of the Constitution.

This case at bar is very much alike, factually to the **Tweel** case. The unlawful obtainment of records in the **Tweel** case was condemned by the Fifth Circuit Court of Appeals and reversed. The Appellant's case was not condemned nor reversed, but denied by the same court for the same set of circumstances.

If this case is allowed to remain as law, this Court's position as to the rights of accused or suspected persons, in a long line of cases will be revised and possibly nullified. If this case is allowed to stand it will establish classes of individuals that should not be informed of their constitutional rights and supposedly a class that should be informed. This case further will serve to ratify the United States Department of Agriculture policy of not abiding by the Constitution of the United States. These questions are substantial enough as to judicial impact alone for this Court to grant permission to file a Writ of Certiorari, that this court might affirm or deny the precedent established in this case.

9.

Question No. 9 is presented for the following reasons:

In the instant case, a U.S. Magistrate ordered the Government to obey its discovery order to the extent of Brady vs. Maryland 373 U.S. 83 (1963). Appellant requested whether any of the government's intended witnesses had criminal records. The prosecutor reported to Appellant that there were none with criminal records. During the Trial, it was revealed that one witness was a convicted felon. A Motion for a Mistrial was denied. The Prosecutor explained to the court that he asked of each witness if he or she had a criminal record, and each said no. The prosecutor announced to the court that in so asking, and in receiving an answer, and delivering that answer to the Appellant, that he complied with the court's discovery order. The court agreed. The Appellant maintained then and maintains now that he was denied his constitutional rights of a fair trial by not having had the prosecutor comply more exhaustivelly with the Discovery Order. This case establishes a new standard for complying with Discovery Order as to Criminal cases. The new standard conflicts and nullifies and contradicts established standards and precedent cases. Unless this new standard is to be the standard of the future, this court should grant this Writ of Certiorari and stamp it's approval or disapproval.

CONCLUSION

This Appellant is a black man. The Federal district involved is the Southern District of the State of Mississippi. Both facts may or may not be relevant in the instant case, but considering the history of the State of Mississippi as to its Black Citizens, both facts should at least be known by this court. In the instant case, more new and different precedents in more areas of law are being established than possibly by any other case in the 208 year history of this, our nation. All the precedents appear to the Appellant, to be not in the best interest of the citizens of this nation, or particularly the Federal Court System. All the precedents change existing law to the determent of the Appellant. This case if allowed to stand could be cited in nearly all areas of law, and in so doing would change the legal history of that

area of law. For this case to enjoy such a position, this court must make the final statement as to whether this case is to dictate our future. This court has jurisdiction, and the issues involved are so substantial that this court should grant permission to file the Writ of Certiorari.

- APPENDIX A -

IN THE

UNITED STATES DISTRICT COURT OF APPEALS

for the

FIFTH CIRCUIT

No. 83-4426

UNITED STATES OF AMERICA

Plaintiff-Appellee,

versus

MELVIN R. JENNINGS

Defendant-Appellant.

Appeal from the United States District Court for the Southern District of Mississippi

(January 24, 1984)

Before GEE and GARWOOD, Circuit Judges, and EAST*, District Judge.

GARWOOD, Circuit Judge:

This is an appeal from a judgment of conviction under 18 U.S.C. § 287[1] for making false claims to an agency of the United States government. The claims involved were those on behalf of an organization known as South People, Inc. (SPI) presented to the United States Department of Agriculture (USDA), through the Mississippi State Department of Education (SDOE), for reimbursement for meals served to children under the Child Care Food Program, *see* 42 U.S.C. § 1776. Appellant Melvin R. Jennings was charged in a twelve-count indictment with making, presenting, and causing to be made and presented these allegedly false claims for each of the twelve months beginning in October, 1979 and continuing through September 1980. At trial, the jury found Jennings guilty on four of the twelve counts and acquitted him on the other eight.[2]

On appeal, Jennings raises a number of evidentiary and procedureal issues. Because we find no prejudicial error in the conduct of the trial below, Jennings' conviction is affirmed. Jennings also argues that the trial court erred in summarily suspending him from practicing law in the federal courts of the Southern District of Mississippi. We decline to disturb the order of suspension.

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*District Judge of the District of Oregon, sitting by designation.

[1]Section 287 provides:

> "Whoever makes or presents to any person or officer in the civil, military, or naval service of the United States, or to any department or agency thereof, any claim upon or against the United States, or any department or agency thereof, knowing such claim to be false, fictitious, or fradulent, shall be fined not more than $10,000 or imprisoned not more than five years, or both."

[2]The jury found Jennings guilty of counts two, four, eight, and twelve. These counts involved the months of November 1979, January 1980, May 1980, and September 1980, respectively.

I.

Jennings, a licensed attorney in the State of Mississippi, served as general counsel for SPI, a nonprofit corporation in whose formation Jennings played the principal part. In August, 1979, SPI entered into an agreement with SDOE whereby SDOE agreed to reimburse SPI for certain meal expenses incurred by the day care centers under SPI sponsorship[3]. Under the sponsorship arrangement, each of the centers sponsored provided SPI with the information necessary to submit the monthly claim for reimbursement to SDOE. This information was brought to Jennings' law office by the various centers. Jennings' office personnel would then total the figures from the individual centers into a blanket claim for reimbursement which was submitted by SPI to SDOE. SDOE would process the claim and forward a monthly check payable to SPI which Jennings would deposit in his escrow account[4]. SPI charged each of the day care centers ten percent of the reimbursement funds for administrative costs. When the check

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[3]During the period from October 1979 through September 1980, SPI sponsored a total of eight child care centers. In order to participate in the Child Care Food Program, each of the centers had to be licensed by the Mississippi State Board of Health (MSBH), and the MSBH determine how many children could be enrolled by each center. The number established by the MSBH also operated as a ceiling for the number of children for whom reimbursement could be sought under the Child Care Food Program. The centers sponsored by SPI and their respective maximum enrollment numbers assigned by MSBH were: Anderson Day Care Center (17), Bryant's Nursery (15), Clairmont Preschool Lerning Center (27), Jones Day Care Center (15), Millers Day Care Center (24), Tottsville Child Care Center (64), Keyboard Kiddie Care (15), and Northside Drive Childhood Center (34).

[4]Pursuant to the Child Care Food Program, the SDOE served as a conduit for funds made available by the federal government to Child Care Food Program sponsors. Thus, while the claims for reimbursement were submitted by SPI to SDOE, they were actually claims made upon the United States and therefore subject to the provisions of 18 U.S.C. § 287. This fact was made known to sponsors by a notice at the bottom of the claim for reimbursement form which stated, "I understand that the information on this Claim for Reimbursement and Claim for Reimbursement Worksheet is being given in connection with the receipt of Federal funds and that deliberate misrepresentation may subject me to prosecution under applicable State and Federal Criminal Statutes." This aspect of the matter is not in dispute on appeal, nor was it at trial.

from SDOE arrived, Jennings or his staff would determine what each of the centers was entitled to receive for that particular month, deduct ten percent, and forward the remainder to the centers.

The false claim alleged in each count of the indictment pertained to that part of the claim for reimbursement involving the Tottsville Child Care Center which was owned and operated by Jennings. The principal witnesses against Jennings at trial were three women who served as his legal secretaries during the period of time from October, 1979 through September, 1980. The first of these was Evelyn Henry, who began working for Jennings in September, 1975. She testified that at some point prior to October, 1979, Jennings told her that she had been elected president of SPI, and she subsequently signed the October, 1979 SPI claim for reimbursement from SDOE. Henry stopped working for Jennings, however, in the latter part of the same month, but at that time Jennings requested and received from her a power of attorney authorizing him or his representative to sign her name to SPI documents.

According to the government's evidence, Jennings instructed the secretaries who followed Henry to sign Henry's name to the monthly claims for reimbursement submitted to SDOE. He explained to them how to compile the information from the individual day care centers to complete the master claim. One of these secrtaries, Jackie Hart, testified that while the figures for the other centers needed to complete the master claim came from those centers, the figures for Tottsville came directly from Jennings. According to Hart, regarding the preparation of the work sheets reflecting the meal count from Tottsville, either Jennings would prepare the work sheets himself, taking the figures "from the top of his head," or he would show Hart how to complete the work sheets. Jennings told her that the meal count had to be within a certain range, that she should never be consistent in completing the work sheets, and that she should not use the same number of meals too often. Jennings also told Hart to represent herself as Henry if asked who she was when submitting a claim to SDOE.

The government's evidence showed that Jennings had instructed

Helen Knight, the director of the Tottsville center from 1978 to 1981, to inflate the number of meals purportedly served at the center when she filled out the work sheets from which Tottsville's claim for reimbursement was completed. Jennings explained to her that "he didn't have any money coming in and the only way we were going to be working is we had to inflate the numbers so we'd have some money." The director trestified that during the school year from September, 1979 through May, 1980 the average attendance was approximately thirty-five students; during the summer the average dropped to twenty-five. The claims for reimbursement for the Tottsville center for this period, however, consistently represented that more students had been in attendance. The government's evidence further demonstrated that the disparity between the number of children actually attending Tottsville and the number represented by the claims for reimbursement was not unknown to Jennings since he had stopped by the center almost every day and had seen the number of children in attendance.

The government also introduced the testimony of the SDOE area supervisor for the Child Care Food Program who had on two occasions visited the Tottsville center and observed the number of children eating a particular meal. The supervisor's report concerning a visit made on November 16, 1979 indicated that forty children had eaten breakfast at the center. The November, 1979 work sheet for Tottsville showed that reimbursement for sixty-four breakfasts had been sought for the same date. The supervisor's report on an April 4, 1980 visit indicated that thirty-two children had been served an afternoon snack. The April work sheet sought reimbursement for sixty-four children on that date.

From October, 1980 through February, 1981, Pace and Shelton, an independent firm, conducted an audit for SPI's activities regarding the Child Care Food Program. Jennings complained to SDOE about the results obtained by Pace and Shelton, and subsequently the matter was transferred to USDA for resolution. Auditor McDonald of USDA was assigned to conduct another audit of SPI. After reviewing SPI's records and discovering possible program violations, McDonald referred the matter to the investigations section of USDA's Office of Inspector

General. In the course of McDonald's audit, he had copied some of the SPI documents and eventually turned these copies over to the Investigations division, although none of the copies were introduced at trial. Investigator Brewer, who testified for the government at trial,[5] proceeded to visit Jennings' office where he identified himself as being a party of an investigation separate from auditor McDonald and the Pace and Shelton audit. He did not, however, disclose to Jennings that he was conducting a criminal investigation. Jennings subsequently provided Brewer with the records pertaining to the period from October, 1979 through September, 1980. As a result of Brewer's investigation, the instant indictment was ultimately returned.

II.

Jennings' first claim of error concerns the government's use of certain summary charts at trial. Twelve of these charts consisted of summaries of the meals claimed to have been served by the day care centers under SPI sponsorship for each of the months beginning with October, 1979 through September, 1980. Government exhibit 49A (against which, together with government exhibit 51A, Jennings' major complaints are directed) presented a comparison of what the government asserted was the actual number of meals served at the Tottsville center during twenty-two days[6] with the meals claimed for reimbursement for those same days. Government exhibit 51A consisted of a presentation, based on an extrapolation of the average number of meals served at Tottsville during the twenty-two days summarized in exhibit 49A, of the amount of reimbursement Tottsville was actually entitled to for the twelve months in question.

Federal Rule of Evidence 1006 provides that "[t]he contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary or calculation." Recognizing the possibility for misuse of summary charts, this Court has previous-

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[5]Brewer testified at the beginning of the government's case and again at the end as a summary witness.

[6]Twenty and two-thirds days in September 1980 and one meal each on November 19, 1979 and on April 4, 1980.

ly cautioned that a trial judge must carefuly handle their preparation and use. **Myers v. United States**, 356 F. 2d 469, 470 (5th Cir.), **cert. denied**, 384 U.S. 952 (1966). We here reiterate that caution. Jennings argues initially that the documents involved in this case were not so voluminous as to allow the use of summary charts. Nevertheless, insofar as the documents underlying these summary charts include almost two hundred pages of material and substantial amounts of mathematical calculations, we cannot find that the trial court abused its discretion in allowing their use for convenience of the jury. These documents included claims for reimbursement, work sheets used to compile the figures used in the claims, and itemized menus. "The most commonly recognized application of this principle is that by which the state of **pecuniary accounts** or other business transactions is allowed to be shown by a witness' schedule or summary." 4 Wigmore, **Evidence** § 1230 at 537 (Chadbourn rev. 1972) (footnote omitted) (emphasis in orignal).

Neither do we find that the charts were not supported by evidence. The government's summary witness explained in some detail how he had derived figures contained in the summary charts from the underlying documents. Although certain of the conclusions in the summary charts are undoubtedly the product of assumptions made by the government, these assumptions are not per se impermissible. This Court has recently noted that such assumptions are allowed "so long as supporting evidence has been presented previously to the jury . . . and where the court has 'made it clear that the ultimate decision should be made by the jury as to what weight should be given to the evidence.'" **United States v. Means**, 695 F. 2d 811, 817 (5th Cir. 1983) (citing **United States v. Diez**, 515 F. 2d 893, 905 (5th Cir. 1975), **cert. denied**, 423 U.S. 1052 (1976), and quoting **United States v. Andrew**, 606 F. 2d 549, 550 (5th Cir. 1979). The central assumption attacked by Jennings in this case is the government's use of the average number of actual meals served from government exhibit 49A (based on an analysis of twenty-two days) to derive, by extrapolation, the total reimbursement that Tottsville was entitled to for the months of October, 1979 through September, 1980. Government exhibit 51A, therefore, essentially assumes that the pattern of average actual numbers served per meal demonstrated for the twenty-two days analyzed in exhibit 49A was not exceeded on

a monthly basis throughout the balance of the year. This assumption was supported by the testimony of day care center workers that the average attendance during the months involved was consistently less than that reflected by the claims for reimbursement, and by the evidence that actual attendance was higher in the September to May period than in June, July, and August. The assumption was also fully exposed as such during cross-examination of the government's summary witness. Furthermore, the trial court repeatedly admonished the jury that the summary charts were the government's view of the evidence and that it was the jury's responsibility to determine whether the matters contained in the charts were, in fact, true and correct. We note also that the witness preparing the chart "was subject to full cross-examination by defendant['s] attorneys" concerning the matters reflected by exhibit 51A and the assumptions on which it was based. **Means** at 817. The trial court has discretion in these matters, **Means** at 817, and although it is arguable that the nexus between exhibit 51A's conclusions and the supporting evidence is close to being as attenuated as should be allowed for such form of presentation and that hence the trial court's ruling approached the limits of its discretion, we cannot say that those limits were exceeded or the discretion abused.

Even if it were determined that the trial court abused its discretion in allowing the use of the government's summary charts, we cannot see that Jennings was prejudiced thereby. The full cross-examination and the trial court's admonitions to the jury served to minimize the risk of prejudice. Moreover, that the jury returned a verdict of guilty on only four counts demonstrates that it did not blanketly or indiscriminately accept the results of the government's summary charts. Jennings' main complaint of the charts is their assumption that all the months were similar in number of meals actually served. The jury rejected that assumption. It found Jennings guilty on only four of the twelve counts, and the convictions on those counts were amply supported by evidence independent of the conclusions reached by the summary charts.[7]

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[7]We consider some of the evidence supporting the jury's verdict of guilty on the four counts in our discussion of Jennings' objection to the use of the modified **Allen Charge** in the trial below. Other evidence is reflected in part I of this opinion. The sufficiency of the evidence is not challenged as to any of the counts of which Jennings was convicted.

Jennings also argues that the government's summary witness was not qualified to testify concerning the summary charts. He contends that the preparation of summary charts such as those used in this case and the presentation of those charts in court must be done by an expert witness qualified to give opinions in the area in which he is called upon to testify, or by a witness who has specialized knowledge about the subject matter about which he testifies. He cites **United States v. Seelig**, 622 F. 2d 207, 215 (6th Cir.), **cert. denied**, 449 U.S. 869 (1980), for this proposition. In **Seelig**, however, the court found that a summary chart could not be used because the underlying records on which the chart was based were not introduced as exhibits nor were they made available to the opponents as required by Fed. R. Evid. 1006. The court then considered whether the charts could be introduced under the exception for the basis of opinion testimony by experts, pursuant to Fed. R. Evid. 703. The court concluded that the summary witness was not an expert and therefore Rule 703 did not apply.

The posiion actually adopted by the Sixth Circuit and the one that this Court follows is that when a chart does not contain complicated calculations requiring the need of an expert for accuracy, no special expertise is required in presenting the chart. **See United States v. Scales**, 594 F. 2d 558, 563 (6th Cir.), **cert. denied**, 441 U.S. 946 (1979). The calculations in this case were of such a nature, and the govenment's witness, who, though not an accountant, had received training in accounting procedures and in claim investigations of this kind, was qualified to testify concerning the summary charts.[6]

III.

Jennings complains of certain comments made by the prosecutor during his closing argument, alledging that these com-

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[6]The trial court found that the government's summary witness had specialized knowledge insofar as he was "an investigator in this field for the United States Department of Agriculture who is familiar with the forms, their preparation, and the regulations regarding them." The witness testified that he had received training in accounting principles, tracing of funds and document examination through the Federal Law Enforcement Training Center located in Glencoe, Georgia.

ments were an attack upon counsel for the defense and therefore prejudicial error.[9] The prosecutor's remarks may reasonably be construed as an attempt to explain why certain of the government's witnesses were uncooperative with Jennings' attorneys prior to trial. Counsel for the defense had repeatedly claimed in their cross-examination of these witnesses that they had denied Jennings his constitutional right by refusing to talk with his attorneys prior to trial. The prosecutor also alluded to defense counsel's suggestions to various witnesses during cross-examination that they had engaged in prostitution, embezzlement, and "intimate relationships" with a government investigator and a third party. In light of these attacks upon the credibility of the government witnesses, the prosecutor was "not obliged to sit quietly while character assaults [were] made on his witnesses; he [was] entitled to argue fairly their credibility." **United States v. Bright,** 630 F. 2d 804, 824 (5th Cir. 1980). Moreover, even if the prosecutor's remarks are construed as an attack upon defendant's counsel, we do not find that the error was sufficiently prejudicial to warrant reversal.

IV.

In preparation for the trial below, Jennings' counsel moved pursuant to Fed. R. Crim. P. 16 for discovery of the criminal records, if any, of the government's prospective witnesses. The motion was granted. During the course of cross-examination of one of the government's witnesses at trial, Jackie Hart, that witness testified that she had been convicted of attempting to cash a check that she had taken from Jennings' office. The govern-

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[9]The relevant remarks of the prosecutor are as follows:

"Let me talk about one thing before we leave, before my time runs out. You think about those ladies from there. Now they want to talk about those ladies not talking to them prior to the time they came to the courtroom. Did you — you did, you observed the way they treated those ladies here in this courtroom. I mean the gall that they had to ask them the questions they did and treat them the way they did right here in front of y'all, can you imagine — can you imagine what these gentlemen would have done if those ladies had dared talk to them out on the street?"

ment had not produced the criminal record of this witness,[10] and Jennings therefore moved that the witness' testimony be stricken and the jury instructed to disregard the testimony of the witness for failure to comply with the court's order. The trial court denied the motion.

We note that "[r]elief for violations of discovery rules is in the discretion of the trial court. To support a claim for reversal of the exercise of that discretion, the accused must show prejudice to substantial rights." **United States v. Valdes,** 545 F. 2d 957-961 (5th Cir. 1977); **United States v. Saitta,** 443 F. 2d 830 (5th Cir.), **cert. denied,** 404 U.S. 938 (1971). There was no showing of prejudice in the present case. Counsel for defense admitted that they were aware of the witness' arrest for attempting to cash the check; Jennings was the complaining witness in that case. Moreover, as the trial court observed, "it was obvious from defense counsel's questioning of the witness of it."[11] Even if Jennings had not known of the conviction, it is apparent that he got all the mileage

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[10]The prosecutor stated to the trial court that he had questioned all the witnesses as to whether they had ever been convicted and that all the witnesses represented to him that they had not. The night before Hart testified the prosecutor questioned her on the basis of testimony that had come out at trial to the effect that she had been arrested for trying to cash checks from Jennings' office. He stated that Hart told him that she had been arrested and that "the matter had been disposed of thereafter." He maintained that he had no reason to believe that she had been convicted.

[11]"[Mr. WALLS (Counsel for Defendant)]: Q. Now you testified a few minutes ago about being arrested. Isn't it a fact that this occurred when you left from Mr. Jennings' office one day for lunch?

"[Mrs. Hart (Witness)]: A. Yes, true.

"[MR. WALLS]: Q. And isn't it a fact that you had been working with the –

"BY MR. DAVIS [Prosecutor]: Your Honor, I object. He cannot go into the details upon impeachment.

"BY MR. WALLS: Your Honor, I'm talking about why she left work. She's testifying about a man she worked for.

"BY MR. DAVIS: She's testified about the arrest, your Honor. The Federal Rules do not provide for going into the details.

"BY MR. WALLS: Your Honor, they opened this area up.

"BY THE COURT: I'll let him proceed with this line of questioning.

out of it that he could have if informed of it earlier. If he were prejudiced by surprise he should have called it to the trial court's attention, and his remedy in that event would normally be to request a recess. **United States v. Bockius,** 564 F. 2d 1193, 1196-97 (5th Cir. 1977). No recess was requested here, obviously because none was needed. Under these circumstances, the trial court clearly did not abuse its discretion in refusing to strike the testimony of the witness.

(Footnote[11] Continued.)

"BY MR. WALLS, Continuing: Q. Mrs. Hart, isn't it a fact that this occurred regarding some checks for Jones Day Care Center?

"A. You mean the arrest?

"Q. Yes.

"A. Yes.

"Q. That you had taken as a result of your employment in Mr. Jennings' office?

"A. Yes.

"Q. That you went to the bank and attempted to cash those checks?

"A. One, yes.

"Q. Acting as if you were some person from Jones Day Care Center?

"A. Yes.

"Q. And that you never returned to Mr. Jennings' office after that?

"A. Correct.

". . .

"BY MR. WALLS, Continuing: Q. Who accompanied you?

"A. To the bank?

"Q. Yes.

"A. A friend of mind.

"Q. Was it a man?

"A. Yes.

"Q. Was it your husband?

V.

Prior to the trial below Jennings filed a "Motion to Quash Indictment Based Upon Outrageous Governmental Conduct and Vindictive and Selective Prosecution of Defendant." This motion alledged broadly that blacks had been selectively prosecuted in the state of Mississippi and that government agents had, "disguising themselves as auditors, illegally, outrageously, and discriminatorily invaded his privacy and unlawfuly searched and seized his property." The trial court denied this motion without a hearing but allowed Jennings to file sworn affidavits stating proffered facts. During the course of the trial Jennings subsequently filed an affidavit in support of the motion along with the deposition of an alleged witness, which exhibit was reviewed by the trial court.

In order to prevail in a defense of selective prosecution, a defendant must meet two requirements which we have characterized as a "heavy burden." **United States v. Johnson,** 577 F. 2d 1304, 1308 (5th Cir. 1978) (quoting **United States v. Berrios,** 501 F. 2d 1207, 1211 (2d Cir. 1974). First, he must make a *prima facie* showing that he has been singled out for prosecution although others similarly situated who have committed the same acts have not been prosecuted. **United States v. Tibbetts,** 646 F. 2d 193, 195 (5th Cir. 1981). Second, having made the first showing, he must then demonstrate that the government's selective prosecu-

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(Footnote[11] Continued.)

"A. No.

"Q. What was his name?

"A. L. V. Lowe.

"Q. Where were you convicted of that?

"A. Here in Hinds County.

"Q. Here in Hinds County?

"A. Yes."

tion of him has been constitutionally invidious. Id The showing of invidiousness is made if a defendant demonstrates that the government's selective prosecution is actuated by constitutionally impermissible motives on its part, such as racial or religious discrimination. **United States v. Lichenstein,** 610 F. 2d 1272, 1281 (5th Cir.), **cert. denied,** 447 U.S. 907 (1980).

A defendant is not automatically entitled, however, to an evidentiary hearing to make the required showing. He must first present facts "sufficient to create a reasonable doubt about the constitutionality of a prosecution . . ." *United States v. Hayes,* 589 F. 2d 811, 819 (5th Cir.), **cert. denied,** 444 U.S. 847 (1979); **United States v. Ream,** 491 F. 2d 1243, 1246 (5th Cir. 1974). It is clear in the present case that Jennings did not offer such facts to the trial court. His motion to quash contained nothing more than broad allegations concerning the selective prosecution of Blacks. Moreover, after reviewing the affidavit submitted by Jennings in support of the motion to quash and the statement of W. C. Battle, also offered in support of the motion, we are unable to conclude that Jennings has presented facts sufficient to create a reasonable doubt about the selectivity of the prosecution in this case. That persons cooperating with the government in this case, and lower in the organizational structure than Jennings, were not prosecuted while Jennings was, does not come even close to

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[12]We have previously emphasized that selective prosecution, absent some invidious element, may not be challenged.

> "As a substantive matter, the constituional authority to 'take care that the laws [are] faithfully executed' is textually committed to the authority of the executive branch, U.S. Const. art. II, § 3; **United States v. Hamm,** 659 F. 2d 624, 628 (5th Cir. 1981) (en banc), and the authority of the executive branch to enforce the law in a selective fashion is legally unchallengeable absent proof by the defendant that the government has exercised its discretion upon an invidious basis such as race. **United States v. Batchelder,** 442 U.S. 114, 123-25 & n. 9, 99 S.Ct. 2198, 2204 & n. 9, 60 L. Ed. 2d 755 (1979); **Bordenkircher v. Hayes.** 434 U.S. 357, 364, 98 S.Ct. 663, 668-69, 54 L.Ed. 2d 604 (1978); **Oyler v. Boles,** 368 U.S. 448, 456, 82 S. Ct. 501, 506, 7 L.Ed. 2d 446 (1962)." **United States v. Chagra,** 669 F. 2d 241, 247 (5th Cir.), cert. denied, 103 S. Ct. 102 (1982).

See also **United States v. Johnson,** 577 F. 2d 1304, 1307-09 (5th Cir. 1978); **United States v. Ream,** 491, F. 2d 1243, 1246 & n. 2 (5th Cir. 1974).

meeting the "similarly situated" branch of the selective prosecution defense. Even assuming that Jennings had made the requisite showing that his prosecution was slective, he has offered nothing but bare general allegations that the selectivity was motivated by racial considerations.

Nor do we find that the trial court should have conducted a hearing on the basis of Jennings' allegations that the government had engaged in outrageous and vindictive conduct in prosecuting him. We can discern no reason for characterizing the government's conduct as vindictive. As to Jennings' charge that the government's conduct was outrageous, he appears to focus on the circumstances under which the government obtained certain documents from him relating to SPI's involvement in the Child Care Food Program. Jennings alleged, both in his motion to quash the indictment and in his motion to supress certain illegally obtained evidence, that government agents had acquired documents from him under the guise of an audit or civil investigation when Jennings was acutally the subject of a criminal investigtion. Insofar as the trial judge did hear evidence on the motion to suppress concerning this allegation, Jennings was not prejudiced when the trial court declined to conduct another hearing concerning the government's allegedly outrageous conduct that would have simply repeated the same evidence heard on the the motion to suppress. We therefore conclude that the trial court committed no error in refusing to grant Jennings a hearing on the motion to quash.

VI.

Jennings further alleges as error the trial court's refusal to give the jury an instruction on the failure of the government to call certain witnesses. Defendant's objections center on one potential witness in particular, namely, the USDA auditor who was assigned to audit SPI after Jennings had expressed disapproval of an audit performed by an independent audit firm.

A missing witness instruction is not justified if it appears that the testimony of the witness who is not called would likely have been merely cumulative or corroborative. **Georgia Southern and Florida Railway Co. v. Perry**, 326 F. 2d 921, 924 (5th Cir. 1964). **See also United States v. Ramzy**, 446 F. 2d 1184, 1187 (5th Cir.),

cert. denied, 404 U.S. 992 (1971); **United States v. Tant**, 412 F. 2d 840 (5th Cir.), **cert. denied**, 396 U.S. 876 (1969). The USDA auditor testified at a pretrial hearing, and it is clear from a review of the transcript of that hearing that his testimony was cumulative of the testimony given at trial by the government's summary witness. There was no showing to the contrary.

From the circumstances of this case it is clear that the government could have conceivably called either the USDA auditor or the investigative agent Brewer to testify concerning his findings, McDonald, however, upon discovering possible violations in the course of his audit, referred the matter to the USDA's investigative division, whereupon agent Brewer proceeded to conduct his own investigation into the records of SPI. Under the circumstances the government's decision to call Brewer and not McDonald was a decision that spared the jury from needless cumulative testimony. To require the government to call McDonald in order to ward off a possible negative inference or to present testimony to explain why he was not called would have simply invited a waste of time.[13] Jennings, was therefore, not entitled to the requested instruction.

VII.

Jennings argues that the trial court erred in giving the modified **Allen Charge** in this case. After the jury had deliberated for approximately one day, they returned a note to the trial judge indicating that they could not reach agreement on any of the twelve counts of the indictment. The trial judge then gave the jury the modified **Allen Charge**. The jury retired for approximately two

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[13]This is among the reasons why one commentator has noted that "[d]espite the plenitude of cases supporting the inference, caution in allowing it is suggested with increasing frequency." McCormick, **Evidence** §272 at 657 (1972).

> "This counsel of caution is reinforced by several factors. Possible conjecture or ambiguity of inference is often present. The possibility that the inference may be drawn invites waste of time in calling unnecessary witnesses or in presenting evidence to explain why they were not called. Anticipating that the inference may be invoked entails substantial possibilities of surprise. And finally, the availability of modern discovery procedures serves to diminish both the justification and the need for the inference." *Id.* (footnotes omitted).

more hours of deliberations, after which they returned a verdict of guilty on four of the twelve counts. The thrust of Jennings' argument is that the **Allen Charge** is particularly inappropriate in cases involving a multicount indictment, since the jury will almost certainly arrive at a compromise verdict. He specifically alleges that there was "no rhyme nor reason" for the jury's verdict in this case.

This Court has repeatedly upheld the use of the modified **Allen Charge.** *See, e.g.*, **United States v. Vincent,** 648 F. 2d 1046, 1049 (5th Cir. 1981); **United States v. Zicree,** 605 F. 2d 1381, 1390 (5th Cir. 1979), cert. denied, 445 U.S. 966 (1980). Moreover, the charge has been upheld in cases involving multicount indictments. *See, e.g.*, **United States v. Blevinal,** 607 F. 2d 1124 (5th Cir. 1979), **cert. denied,** 445 U.S. 928 (1980). We, therefore, find no misuse of the charge under the facts of this case.

Nor do we find that the jury's verdict was without rhyme or reason. The jury found Jennings guilty of counts two, four, eight, and twelve. Count two (November 1979) involved one of the months in which an SDOE official had made an on-site inspection of the Tottsville center that revealed a number of children in attendance that was substantially lower than the amount claimed in the claim for reimbursement for that center. Counts four (January 1980) and twelve (September 1980) were supported by work sheets filled out in Jennings' own handwriting. The actual meal count for September 1980 showed a much smaller number of meals than those claimed for. Finally, count eight (May 1980) was supported by the admission of Jennings' expert witness that Jennings had made a small overclaim for the month in question. We do not pass upon whether this evidence, standing alone, would support a conviction on each of the four counts, particularly count eight. But the referenced evidence by no means stands alone and we do find that it was sufficient to distinguish the jury's verdict of guilty on those counts from its acquittal on the other eight counts.

VIII.

At trial below Jennings filed a motion to suppress the various records that had been obtained by the auditor, McDonald, and by the government investigator, Brewer. The motion was denied

by the trial court and Jennings now contests that ruling. He alledges that these government agents seized the records under the guise of a civil audit when in actuality Jennings was under criminal investigation.

It is not necessary for this Court to determine whether, as Jennings suggests, government agents failed to inform him that he was under criminal investigation before obtaining records from him. The only records obtained were SPI's records relating to SPI's involvement in the Child Care Food Program, and the records so obtained were not introduced in evidence at trial. Paragraph 13 of the agreement entered into by SPI and SDOE (Government exhibit 2) required that SPI, "[u]pon request, make all accounts and records pertaining to the Program available, to State Agency and United States Department of Agriculture representatives, for audit or review at any reasonable time and place." The records in question were likewise those which the contract required SPI to keep and maintain. By entering into this agreement, SPI voluntarily waived any claims to privacy that it might have had with respect to documents relating to this contract. **Zap v. United States**, 328 U.S. 624, 628 (1946). In **United States v. Griffin**, 555 F. 2d 1323 (5th Cir. 1977), this Court considered a set of circumstances essentially identical to those presented by this case. There, the owner of a drugstore, apparently a sole proprietorship, had entered into an agreement with the Texas State Department of Welfare whereby he would be reimbursed by the state for providing pharmaceutical services to welfare recipients. He entered into a contract with the state agency that required him to permit state officials to examine the prescription records of welfare recipients. On the occasion in question, state agents arrived at the drugstore and requested permission to examine the records. The agents were asked to wait until the owner of the drugstore returned to the store, but after waiting a short while, they began to examine the records and also seized the store's copies of those prescriptions paid for by the state agency. The Court determined that the owner had "knowingly and voluntarily agreed by contract to maintain records of the prescriptions which he billed to the state and to make these records available for inspection at any time." *Id.* at 1325.

Defendant's reliance upon **United States v. Tweel**, 550 F. 2d 297 (5th Cir. 1977), is misplaced. In **Tweel**, this Court held that the failure of an IRS agent to apprise a defendant of the criminal nature of his investigation before obtaining permission from the defendant to copy certain of the defendant's own tax records constituted an unreasonable search and seizure. Since the consent was obtained by deception, there was a violation of the defendant's Fourth Amendment rights. In the present case, however, consent to examine SPI's records was not obtained by deception – but rather by contractual agreement. We also observe that the records in question were SPI's, not Jennings'.[14]

IX.

Jennings' final claim of error concerns the trial court's suspension of him from the practice of law in the federal courts of the Southern District of Mississippi. [15] He argues that he was denied due process of law when the order of suspension was entered

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[14]As noted, SPI was a Mississippi nonprofit corporation. Its referenced agreement with SDOE recites that SPI warrants and represents that it is a nonprofit agency which is either "exempt" (or in the process of becoming so) from federal "income tax under Section 501(c)(3) of the Internal Revenue Code of 1954" or is "curently operating a federally funded program requiring nonprofit tax exempt status" and that it accepts "final financial and administrative responsibility" for its part of the contract.

[15]The trial judge entered the order of suspension on the basis of Rule 1 of the Rules of the United States District Court for the Southern District of Mississippi. The rule states in pertinent part:

"ADMISSION OF ATTORNEYS"

"A. **General Admission.** Any attorney properly shown to the satisfaction of the Court then to be in good standing as a member of the Bar of the State of Mississippi and admitted to practice before the Mississippi Supreme Court shall be admitted to practice generally as a member of the Bar of this Court upon taking the oath, subscribing the Roll of Attorneys of this Court, and paying the fee to the Clerk therefore; and such attorney shall enjoy all the rights and privileges as an attorney of this Court during good behavior, until otherwise ordered by the Court."

before his conviction became final on appeal, [16] and, moreover, that he was also denied due process by the failure of the trial court to conduct a hearing prior to entering the order of suspension.

Jennings relies on **In re Ming**, 469 F. 2d 1352 (7th Cir. 1972), for the proposition that if a conviction itself is to be used to form the basis for an attorney's suspension, then, "that conviction must have reached finality, at least to the extent of exhaustion of direct appeals." *Id.* at 1354. **Ming** involved conviction of the misdemeanor offense of willful failure to file income tax returns. The Third Circuit apparently has taken a different position, however. In **United States v. Friedland**, 502 F. Supp. 611 (D. N.J. 1980), *aff'd without opinion*, 672 F. 2d 905 (3d Cir. 1981), the district court held that "a court constitutionally may suspend a member of its bar summarily on the basis of a felony conviction even though that conviction has not been finalized by completion of the appellate process." *Id.* at 616. The **Fridland** opinion was approve by "all the judges sitting in this district." *Id.* at 620. The conviction there considered was for felonies involving moral turpitude. *Id.* at 619-20.

The question before us is a matter of first impression for this Court. The offenses here are plainly felonies involving moral turpitude. *See* **Jordan v. DeGeorge**, 341 U.S. 223, 227 (1951).

Having considered the reasoning of the opinion in **Ming, supra**, we are not convinced that due process requires that conviction of a felony involving moral turpitude be final before it can be used as a basis for suspending an individual from the practice of law before a federal court. The thrust of the argument in **Ming** was that since the Seventh Circuit had construed 8 U.S.C. § 1251 (a)(11), concerning the statutory basis for deportation of aliens, so that "conviction" was held to mean "final conviction," *see* **Will**

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[16]**The government argues that Jennings' objections are moot, since if we affirm his conviction there is no appeal pending and if we reverse his conviction he will no longer be suspended. Nevertheless, Jennings has the option of filing a petition for a writ of certiorari in the United States Supreme Court. We, therefore, proceed on the assumption that our affirmance of his conviction does not moot the present point. *See* In re Ming, 469 F. 2d 1352, 1354 (7th Cir. 1972).**

v. **Immigration and Naturalization Service**, 447 F. 2d 529, 531, 533 (7th Cir. 1971), conviction should be construed similarly in the context of disbarment proceedings directed against a lawyer. The court observed that, "[i]n looking at the panoply of individual rights, we do not find a basis for awarding a citizen lawyer a lesser position than the alien." 469 F.2d at 1354.

We note to begin with our disagreement with **Ming**'s apparent assumption that temporary suspension from the practice of law pending an appeal is as severe a sanction as deportation.

More importantly, in our view **Ming** does not take adequate note of the public interest in avoiding the appearance of impropriety in the legal profession. This interest distinguishes the lawyer from the alien. As the Seventh Circuit itself has stated, "the real question at issue in a disbarment proceeding is the public interest and an attorney's right to continue to practice a profession imbued with public trust." **In re Echeles**, 430 F. 2d 347, 350 (7th Cir. 1970). Once viewed from the standpoint of the need to uphold public confidence in the bar, the fact that a conviction has not yet been sustained on appeal loses much of its significance.

> "It is not the fact that the attorney may have committed the underlying wrong, but the fact that the attorney is a 'convicted felon' or stands convicted of an offense involving moral turpitude that tends to impair public confidence in the judicial system and the integrity of the bar as a whole." **In re Stoner**, 507 F. Supp. 490, 492 (N.D. Ga. 1981).

The American Bar Association Special Committee on the Evaluation of Disciplinary Enforcement has, moreover, pointed out that allowing a lawyer to practice pending appeal of a criminal conviction not only affects the public's appraisal of the legal profession, but also the interests of individual clients.

"No single facet of disciplinary enforcement is more to blame for any lack of public confidence in the integrity of the bar than the policy that permits a convicted attorney to continue to practice (pending appeal) while apparently enjoying immunity from discipline . . .

". . .

"The consequences of permitting the convicted attorney to continue to practice are not limited to the adverse effect upon the reputation of the profession. The clients of the convicted attorney suffer also. One who is unaware of the conviction might retain the attorney and unwittingly compromise his rights. Adversary counsel aware of the conviction may be reluctant to negotiate with the attorney, to enter on a setlement with him, to entrust him with an escrow fund, or to be associated with him of counsel. These are all circumstances totally unrelated to the merits of the client's cause, and they may impair it. Moreover, the conviction may be affirmed and the attorney sent to prison while the new client's claim is pending. The client will then be forced to employ new counsel, who will have to familiarize himself with the matter. This means more delay and considerable duplication of expense to the client.

"There is a further threat to the convicted attorney's client. The attorney, aware that the conviction ultimately will result in his disbarment, and, assuming that he has little to lose, he may engage in serious misconduct toward his remaining clients for his own personal gain.

"A policy which thus jeopardizes the rights of innocent clients cannot be justified." **Report of the Special Committee on Evaluation of Disciplinary Enforcement**, 95 A.B.A. Reports, 783, 920-21 (197).
See also the Model Federal rules of Disciplinary Enforcement, approved September 21, 1978, by the Judicial Conference of the United States and recommended for adoption on an optional basis by all federal trial and appellate courts, the relevant portions of which are set out in the **Friedland** *opinion. 502 F. Supp. 611 at 615 n. 7.*[17]

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[17]Additionally relevant is the action of the Supreme Court in **In re Mitchell, 420 U.S. 1001 (1975), in suspending an attorney from practice there and issuing an order that he show cause why he should not be disbarred. As Friedland points out, 502 F. Supp. at 616 n. 9, the Supreme Court's suspension was apparently taken on the basis of New York disciplinary action against the attorney at a time when appeal of that action was still pending before the New York Court of Appeals.**

We agree with the statement of the New York Court of Appeals that "[t]o permit a convicted felon to continue to appear in our courts and to continue to give advice and counsel would not 'advance the ends of justice,' but instead would invite scorn and disrespect for our rule of law." **Mitchell v. Association of Bar of City of New York**, 40 N.Y. 2d 153, 156, 386, N.Y.S. 2d 95, 97, 351 N.E. 2d 743, 745 (1976). See also State Bar of Texas v. Heard, 603 S.W. 2d 829, 834 (Tex. 1980) ("An attorney who is convicted of . . . [an offense involving moral turpitude] cannot hold the confidence of the public or the profession as long as the conviction stands."). We also observe that attorneys are officers of the courts before which they practice, and the necessary mutual confidence between bench and bar is undermined when the attorney stands convicted of a felony involving moral turpitude. Accordingly, we hold that due process allows the use of a conviction of a felony involving moral turpitude as a basis for the suspension of Jennings from practice before the Southern District of Mississippi before that conviction has been finalized on appeal.[18]

Jennings also complains that he was denied due process of law when the order of suspension was entered by the trial court without conducting a hearing. We find this argument without merit, however, under the particular facts of this case. In the first place, the judge who entered the order of suspension had also presided over the trial at which Jennings was convicted. Under these circumstances it is inconceivable that a hearing would have resulted in other than an order of suspension. The situation in this case is thus parallel to that presented in **Friedland**, where the court determined that the only question that could have been addressed by a post-conviction hearing preceding the order of suspension was whether the crime of which the defendants had been convicted involved moral turpitude. Because the court found a hearing would have certainly concluded that the crime could be so characterized, it concluded that "[n]o prejudice has inured to the defendants because of any procedural default leading to

[18]Of course, should this Court, or the Supreme Court, reverse Jennings' conviction, then his suspension will automatically terminate.

the suspensions." 502 F. Supp. at 618. Here it is plain, as a matter of law, that offenses of which Jennings was convicted are ones involving moral turpitude, and Jennings has not claimed otherwise. We conclude that Jennings was not prejudiced by the failure of the trial judge to hold a separate hearing when he himself had presided at the trial.

In the second place, we cannot find that Jennings has been prejudiced by the lack of a hearing. When the prosecutor originally made recommendations concerning the sentence that Jennings should receive, he also recommended that Jennings be suspended from the practice of law before the federal courts of the Southern District of Mississippi. At that time, Jennings and his attorneys were given an opportunity to respond before the trial judge rendered his decision. Neither complained of the lack of hearing or made any comments at all regarding the suggested suspension. Furthermore, although Jennings; Motion for Stay of Order Suspending Defendant from Practicing Law filed below makes passing mention of the trial court's failure to conduct a hearing, it does not request a hearing, nor does it disclose what matters Jennings would have brought before the attention of the court had such a hearing been held. The primary argument of the motion is directed toward contending that the trial court should not have suspended Jennings before his conviction was finalized by appeal. Under the particular circumstances we hold that Jennings was not denied due process of law.

The judgment of conviction and the order suspending Jennings from the practice of law before the federal courts in the Southern District of Mississippi is therefore affirmed.

AFFIRMED.

- APPENDIX B -

United States of Am... vs.

DEFENDANT: KELVIN B. JENKINS

United States District Court for SOUTHERN DISTRICT OF MISSISSIPPI

DOCKET NO. J82-00041(B)

JUDGMENT AND PROBATION/COMMITMENT ORDER

COUNSEL: In the presence of the attorney for the government the defendant appeared in person on this date JUNE 09 27 83

[ ] WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel

[X] WITH COUNSEL Robert Dash (Name of Counsel)

PLEA: [ ] GUILTY, and the court being satisfied that there is a factual basis for the plea. [ ] NOLO CONTENDERE, [X] NOT GUILTY

FINDING & JUDGMENT: There being a finding/verdict of [ ] NOT GUILTY. Defendant is discharged [X] GUILTY.

Defendant has been convicted as charged of the offense(s) of violating Section 287, Title 18, United States Code: Presenting false claims, as charged in Counts 2, 4, 8 and 12 of the Indictment.

SENTENCE OR PROBATION ORDER: The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period as

Count 2: Five (5) years; on condition that the defendant be confined in a jail type or treatment institution for a period of six (6) months, the execution of the remainder of the sentence of imprisonment is hereby suspended and the defendant placed on probation for a period of five (5) years to commence upon the defendant's release from confinement, and pay a fine in the sum of $7,500.

SPECIAL CONDITIONS OF PROBATION: Counts 4, 8 and 12: IT IS ADJUDGED that the imposition of sentence is hereby suspended and the defendant is placed on probation for a period of five (5) years concurrent with the probation imposed in Count 2, and pay a fine in the sum of $7,500 on each of the three counts.

The fines imposed are for a total of $30,000 and defendant is ordered to stand committed until the fine is paid or he is otherwise discharged by due course of law.

IT IS FURTHER ADJUDGED that defendant report directly to the institution on his own to begin the service of his sentence.

ADDITIONAL CONDITIONS OF PROBATION: In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION: The court orders commitment to the custody of the Attorney General and recommends

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

CERTIFIED AS A TRUE COPY ON

ISSUED DATE 6-27-83 CLERK [illegible] DEPUTY

SIGNED BY: [X] U.S. District Judge [ ] U.S. Magistrate

William H. Barbour, Jr.

Date June 27, 1983

- APPENDIX B -

IN THE

UNITED STATES DISTRICT COURT

for the

Southern District of Mississippi

Jackson Division

Criminal Action No. J82-00041(C)

UNITED STATES OF AMERICA

Plaintiff

VS.

MELVIN R. JENNINGS

Defendant

ORDER OF SUSPENSION

The Court having heard the trial of this matter, and the defendant having now been sentenced, by Judgment and Probation/Commitment Order dated this same date, the provisions of which are incorporated herein, and the Court being aware that defendant is a duly licensed and practicing attorney in the State of Mississippi, and that the testimony during trial established that the defendant is guilty of dishonesty in presenting false claims in violation of federal criminal statutes, and that the provisions of Local Rule 1 of the Rules of the United States District Court for the Southern District of Mississippi provides that an ". . . attorney shall enjoy all the rights and privileges as an attorney of this Court during good behavior, unless otherwise ordered by the Court."

It is THEREFORE ORDERED that the defendant be suspended, effective immediately, of all rights and privileges as an attorney to practice law in all federal courts within the Southern District of Mississippi, and this suspension be in full force and effect pending appeal in this matter.

ORDERED this 29th day of June, 1983.

William H. Barbour, Jr.
UNITED STATES DISTRICT JUDGE

IN THE

UNITED STATES DISTRICT COURT

for the

Southern District of Mississippi

Jackson Division

Criminal Action No. J82-00041(C)

UNITED STATES OF AMERICA

Plaintiff

VS.

MELVIN R. JENNINGS

Defendant

ORDER

This matter being considered on defendant's Motion to Interview Jurors, in defendant's presence, and having considered the arguments of counsel for the defendant and the government, and having made its oral findings of fact in open court, which findings are adopted herein, the Court is of the opinion that the motion is not well-taken, should be and hereby is denied.

ORDERED this 19th day of July, 1983.

William H. Barbour, Jr.
UNITED STATES DISTRICT JUDGE

BY THE COURT:

Mr. Tucker, I do not need anything further.

As counsel for the government has pointed out, Rule 606(b) of the Federal Rules of Evidence absolutely prohibits any inquiry into the validity of a verdict, and that no juror may testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon his or any other juror's mind or emotions as influencing him to assent or to dissent from the verdict or concerning his mental process in connection therewith.

There is an exception which deals with outside influence improperly brought upon the defendant – brought upon the juror.

Counsel, in his motion and in his oral argument, has stated that the basis for the motion is that one or two jurors indicated some confusion over an instruction, specifically the Allen Charge which was given by this Court. This Court is of the opinion in regard to that matter that any such inquiry would be an inquiry into the jury's deliberation and things influencing the jurors' mind, and accordingly could not be reached because the only persons available for testimony on that matter would be the people within the juryroom who would be the jurors themselves. Such testimony is absolutely prohibited by Rule 606(b).

The second matter pertained to Juror Oliver Smith, and allegations that he somehow received some threats to change his vote. Those alegations, however, are not a threat brought by anyone outside of the juryroom but specifically the allegation states that such threats or persuasions as might have been used in regard to Juror Oliver Smith were used by other members of the jury. The Fifth Circuit has addressed the matter of not only the influence of the Allen Charge on jurors but also the question of Rule 606(b) in the case of U.S. v. Benson, 648 Fed. 2d 1046. This case was a June, 1981 case, and accordingly is a comparatively recent case.

In that case the convicted felon brought to the attention of the Court that one juror was seen weeping after the Allen Charge was given, and that or another juror allegedly told them that she and other jurors believed Benson to be – the defendant to be

innocent, but felt pressured into acquiescence by the – but felt pressured to acquiesce in the verdict by the Allen Charge. The Fifth Circuit held that the trial judge did question the juror in question in camera about any external influences upon the jury's verdict, but properly refused to question her about the mental processes involved in the jury deliberations. The court held that the trial judge did not abuse his discretion in refusing to hold an evidentiary hearing on the issue as the only question that would have been asked would have concerned the juror's internal mental processes in reaching the verdict.

It is this Court's opinion that the matters brought before the Court on this motion and in defense counsel's arguments can refer only to matters that happened in the juryroom during the course of deliberations, and would pertain only to the effect of these conversations on the juror's mind or his emotions in influencing him to vote for a conviction on the four counts. This is prohibited by Rule 606(b).

The Court further points out that each of the jurors was polled following the rendition of the verdict and each affirmatively indicated that the verdict was his own verdict, including Juror Oliver Smith as well as Jurors Pamela Denise Winston and Rachael Ann Stokes.

Accordingly, the motion is overruled.

The Court, in ruling on each of these three motions, will reserve the right to amend and edit its ruling and opinion upon preparation of the transcript.

Anything further, Gentlemen?

BY MR. TUCKER:

That's all the government has.

BY MR. BUCK:

That's all I have, Your Honor.

BY THE COURT:

All right, Court will stand adjourned.

* * * * * * *

CERTIFICATE

I, David A. Scott, Official Court Reporter, United States District Court, Southern District of Mississippi, do hereby certify that the above and foregoing 32 pages contain a full, true and correct transcript of the proceedings had in the aforenamed case at the time and place indicated, which proceedings were recorded by me to the best of my skill and ability.

I certify that the transcript fees and format comply with those prescribed by the Court and Judicial Conference of the United States.

This the 19th day of August, 1983.

David A. Scott

- APPENDIX C -

IN THE

UNITED STATES DISTRICT COURT OF APPEALS

for the

FIFTH CIRCUIT

No. 83-4426

UNITED STATES OF AMERICA

Plaintiff-Appellee,

versus

MELVIN R. JENNINGS

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT

OF MISSISSIPPI

PETITION FOR REHEARING

Melvin R. Jennings
Attorney At Law
P. O. Box 11291
Jackson, Mississippi 39213
Telephone: (601) 353-1626

Pro Se

ORAL ARGUMENTS

The Appellant, Pro Se, request oral arguments and in support of said request, submit to this honorable panel that in addition to the facts being thoroughly and clearly explained in this Petition for Rehearing, that the Court possibly would benefit from the presentation of the Appellant, especially if the Court desired to ask questions.

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IN THE

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FIFTH CIRCUIT

No. 83-4426

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MELVIN R. JENNINGS

Defendant-Appellant.

On Appeal from the United States District Court for the Southern District of Mississippi

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PETITION FOR REHEARING

STATEMENT OF DISPOSITION OF CASE

This Petition for Rehearing is filed by Melvin R. Jennings, Appellant herein, Pro Se, from the Per Curian Judgment of Gee and Garwood, Circuit Judges, and East, District Judge, affirming the judgement of the District Court. Appellant requests a rehearing pursuant to Rules 32 and 40 FRAP. Judges Gee, Garwood and East in their opinion misapprehended and overlooked certain important facts, issues of fact, and points of law which are pivotal to a proper resolution of the issues on appeal.

STATEMENT OF THE ISSUES

The issues necessary for this Petition for Rehearing are detailed in the heading of Arguments One (1) through Six (6). In general, they are whether or not this panel perceived as facts the careful handling and preparation of summary charts; the amply supported evidence being sufficient; certain wrong facts; contradiction of facts; and no prejudicial error.

STATEMENT OF THE CASE

The Defendant was charged in a Twelve (12) Count indictment of submitting false claims to the United States Government; he was tried and convicted by a jury, which after several hours of deliberations was given a Modified Allen Charge and hence, convicted the Defendant of Four (4) of the Twelve (12) Counts. The Defendant appealed the Trial Court's ruling to the Fifth Circuit Court of Appeal, who, upon reviewing the alledged facts of the case, affirmed the judgment. The Defendant is now appealing, Pro Se, to the Court through a Petition for Rehearing because of many, many errors, some irreversible, made by both courts and defendant's former counsel.

ARGUMENT NO. 1

THE COURT ERRONEOUSLY FOUND THAT: THE TRIAL JUDGE CAREFULLY HANDLED THE PREPARATION AND USE OF THE SUMMARY CHARTS; THE PRESENTATION OF THE CHARTS DID NOT SWAY THE JURORS (OP., 11); THE JURORS WERE RESPONSIBLE FOR "[D]ETERMINING WHETHER THE MATTERS CONTAINED IN THE CHARTS WERE, IN FACT, TRUE AND CORRECT" (OP., 11); THE SUMMARY CHARTS COMPILED WITH RULE 1006 TO THE EXTENT OF ACCURACY, VOLUMINOUSNESS AND NON-PREJUDICIAL CONCLUSIONS (OP., 8).

It has been determined by Jennings from the opinion that this Court's misconceptions of the facts are apparent and therefore the Court should reverse itself.

This argument shows the Court specifically what facts were misleading, deceptive and/or erroneous and precisely what lead to that error and deception.

Jennings was charged in a twelve count indictment with making false claims to U.S.D.A. for October, 1979 through September, 1980. The jury found Jennings guilty on four (4) counts and acquitted him on eight (8), and because of the latter the Court concluded erroneously as to how these guilty verdicts were surmised, and therefore, concluded "the jury did not blanketly or indiscriminately accept the results of the government's summary chart," (Op., 11) and "the convictions on those counts were amply supported by evidence independent of the conclusions reached by the summary charts," (Op., 11).

It is evident after comparing Count 2 and Count 7, that there was no real basis for finding the Defendant guilty on Count 2 and innocent on Count 7. These two counts are identical in every aspect except for the amount overclaimed. The alledged overclaim in Count 2 was $10.58 and in Count 7, $8.54 (G-35; G-36). This indicates that through democratic voting and random selections (Exh. E) guilty verdicts were produced, without the slightest regard to summary charts or supporting evidence as ruled by the Courts. This instance, is the **only exception** to the argument that the summary chart (G-49A) and the independent evidence (G-35; G-36) was not used to convict Jennings.

The Court stated that "[W]e do not pass upon whether this evidence standing alone would support a conviction on each of the four counts, particularly Count 8. But the reference evidence by no means stands alone and we do find that it was sufficient to distinguish the jury's verdict of guilty on these counts from it's acquittal on the other eight counts" (Op., 24). These statements support Jennings' conclusion that this court is also uncertain as to how guilty verdicts were determined by the jury.

It is conceivable to anyone reading exhibit G-49A that Jennings alledgedly overclaimed meals (G-49A - the West review) on one (1) day out of one (1) particular month (concluding he was guilty on that count) and one (1) day out of another month (G-49A - the West Review #2) (concluding a not guilty verdict), and one would immediately say that if he is guilty on the first

West Review (G-49A), then he must be guilty on the second Review (G-49A). The jury could not have used the summary chart to determine the guilty verdict on Count 2. (Most unlikely)

It is also apparent that the independent supporting evidence (G-35; G-36) was not used to determine a guilty verdict by the jurors, because if the jurors had used the West exhibits (G-35 and G-36) they would have immediately concluded that if he was guilty on Count 2 (G-35) then he most assuredly was guilty on Count 7 (G-36), because they were identical. Even if the Court wants to say that the jury relied on the West Testimony at all because she testified on both Count 2 and Count 7 showing the same similarities and the jury apparently did not use her testimony because Jennings was found guilty on **only** one (1) of those counts (count 2).

Knowing these things to be true, one would ask why a guilty verdict was handed down on Count 2. There was no known reason other than random selection. (Exhibit F).

Jennings argues that the presentation and the expressed validity and accuracy of the summary charts tended to sway or influence the jurors. To be more candid, the summary charts were used as a basis for the chain reaction of events that followed its presentation.

It has been determined by way of carefully prepared analysis, that the summary charts were conjectured, arithmetically wrong, and very misleading, and therefore, not at all an accurate summary of the monthly reports submitted by Jennings. (Exh. A, Exh. B, Exh. C, Exh. D)

It is Jennings' contention that Exhibits G-49A and G-51A played an important role in the development of the guilty verdicts for counts 4, 8, and 12.

When the trial judge saw that Brewer found it necessary to correct its summary charts on three (3) different occasions (Vol. 9, p. 678, p. 679 and p. 701), he should have not allowed the use of the summary charts, because it was evident that the charts did not comply with Rule 1006 FRE, nor case law, **Myers v. United States**, 356 F 2d 469, 470 (5th Cir.), **cert. denied**, 384 U.S. 952 (1966).

In **U.S. vs. Scales** (6th Circuit 1979) 594 F. 2d 448, **cert. denied** 441 U..S. 946, 99 S CCt. 2168. The court ruled that **"[t]he summary or chart must be accurate, authentic and properly introduced without containing deceptive characterizations and conclusions."** It is clear from exhibits A, B, C, and D, that even the 3rd (third) correction made by Brewer was not accurate, that it was not authentic as to summarizing evidence in the records, i.e., the $8,045.07 (10% Administration Fee) is not in evidence in the records, and that G-49A and G-51A drew deceptive characterizations and conclusions.

This court ruled that G-49A and G-51A represented "[a]lmost 200 pages," (Op., 8). The fact is that the claim for reimbursement, (Op., 8) work sheets, (Op., 8) and Menus (Op., 9) for Tottsville Child Care Center, which is the subject of G-49A and G-51A, consisted of only 71 pages. These individual monthly records for Tottsville are clearer to understand than G-49A and G-51A, (Summary Charts). It is inconceivable that this court would conclude that the charts represented voluminous matters when this Court confirmed the trial judges' admonitions to the jury that it was "[t]he juries responsibility to determine whether the matters in the chart were, in fact, true and correct". (Op., 10)

If the Court expected the jury to fulfill this additional burden of G-49A and G-51A, then it logically follows that the trial court asumed, and this court confirmed, that the jury could understand those 71 pages and calculations that alledgely composed G-49A and G-51A. By extention of reasoning, this Court has said that the summary charts were not necessary.

G-49A and G-51A logically was not necessary (see above paragraph) and surely was inaccurate and did reach deceptive conclusions, (Exhibits A, B, C, and D.) all being in violations of FRE Rule 1006. The effect of these conclusions was prejudicial to the Defendant. These conclusions directed the jurors from the evidence to the summary charts. Thereby, inflicting a grave substantial injustice upon the defendant.

To enhance this assertion more, we refer you to the transcript in Vol. 9, p. 116, lines 6-9, which shows that the jury was thoroughly confused by the summary charts. The jurors asked, by way of a note, "[J]udge, please explain, are we to vote on each

count as one individual count?" (The second note from the jury. Vol. 9, p. 1116)

The summary charts led the jury to believe that the 12 count indictment should have been voted on as one (1) count. The Court reiterated the law and (after receiving a 3rd note from the jury). The trial courts version of the Allen Charge was enacted (see Argument 6). This Allen type charge assured the jury "that more or clearer evidence could not be produced. (Vol. 9, p. 1137, lines 2 & 3). As per Argument 1 and 2, this statement from the Allen Charge is inappropriate in this case.

The summary charts made such an impression on the jurors and confused the jurors to the extent that all instructions of law were ignored by the jury, or forgotten by the jury, i.e., "Please state law again," paragraph "witness and beyond reasonable doubt." (Vol. 9, p. 1116) It is easily understood why Exhibit E, evolved. It was the product of the confusion created by the inaccurate summaries of G-49A and G-51A.

ARGUMENT NO. 2

THIS COURT ERRONEOUSLY FOUND THAT "[T]HE CONVICTION ON THOSE COUNTS (2, 4, 8, AND 12) WERE AMPLY SUPPORTED BY EVIDENCE INDEPENDENT OF THE CONCLUSION REACHED BY THE SUMMARY CHARTS." (OP., 11).

"[A]mply supported by independent evidence, "was ruled by this Court in discussing summary charts (G-49A and G-51A) on page eleven (11) of the Opinion. On this page this Court said in Footnote 7, that it would comment further on the independence of the evidence when it discusses "[t]he Modified Allen Charge. Therefore, "[s]tanding along" (Op., 24) surely refers to the summary chart discussion on page 11 of the Opinion.

This Court ruled. "[w]e do not pass upon whether this evidence, standing along, would support a conviction on each of the four counts, particularly Count 8. "(Op., 24)". '[B]ut the referenced evidence by no means stands alone and we do find that it was sufficient to distinguish the jury's verdict of guilty on those counts from its acquittal on the other eight counts.

Because of the two (2) rulings mentioned above the Defendant has established that this Court contradicted itself on the sufficiency of the evidence (Op., P. 11 and 24). The defendant points the following facts in the record about the sufficiency of the evidence for Count 2, 4, 8, and 12 to this Court, and requests this Court to rehear or reverse its ruling as to the four (4) guilty findings.

COUNT 2: November 16, 1979 - The Defendant was found guilty because (1) an SDOE Representative visited the Center at breakfast on this day and alledgely observed and counted 40 (forty) children during her stay, and the Director reported serving 64 for the same period (G-49A reflects this). Mrs. West or the Court did not consider the fact that children could have come for breakfast after her visit, thus, making the meal count higher for that meal. There was a difference, however, of 24 children at a rate of .4410¢ each, totaling $10.58 in overclaim per the West Report. The document used by Mrs. West was incomplete. Mrs. West testified that she saw at the Day Care Center the records (Vol. 7, lines 14-15); she also testified (Vol 7, P. 310, lines 22 & 24) that what she saw at the center (G-16) would coincide with what she counted that day. Ms. Knight testified that Mrs. West would get her information directly from her. (Vol. 7, P. 457, lines 11-17). Bearing in mind the conflicting testimonies, there is surely reasonable doubt as to the independent evidence supporting the guilty verdict for Count 2, resulting from the West testimony and the conflicting Knight testimony. In Vol. 7, P. 313 and 314 in refering to G-36 as testified by Mrs. West, said that "[a]t the present time there had been no change in the children receiving free and reduced meals." "But today the only ones that were there were the free ones." She reported the number of free children as being 47 which conflicts with her previous testimony of 40 children for that meal. Following cross-examination, Mrs. West testified in Vol 7, P. 314, lines 22-23 "[I] really don't remember, I don't know. It's been three (3) years since I did this." It must be remembered that Mrs. West retired three (3) years before testifying and had serviced Five Hundred (500) day care centers each month according to her own testimony. "Vol. 7, P. 300, lines 19-21)".

Considering Mrs. West's retired status (Vol. 7, P. 229, lines 15-16); her incomplete exhibits, her admissions that she "wrote down what the center had prepared," and her admissions that she really didn't remember, along with Ms. Knight's testimony that she deflated the meal count daily (Vol. 7, P. 462, lines 4-12) and obviously reported actual at the end of the month creates doubt. The other employee's recollection of the number of children also cast reasonable doubt as to the number of children being served meals at the center; there was no consistency in any of the testimonies given as shown below.

Mrs. West initially counted forty (40) children. She refuted that by saying the forty-seven (47) children receiving free meals were there that day, and then she said finally that she was not sure. (vol. 7, P. 303, lines 1-5). Ms. Alvis Everette said that there were fifty (50) children; (Vol. 8, P. 589, lines 6 & 7 and vol. 8, P. 606, line 22, P. 607, lines 6-7). Martha Majors estimated twelve (12) children (Vol. 7, P. 492, line 18, P. 493, line 1) at any one time. Claudell Davis estimated forty-five (45) children (Vol. 7, P. 507, line 3) at any time. Claudine Davis estimated forty (40 children vol. 7, P. 541, lines 24, P. 542, line 2) at any one time; Helen Knight recorded and testified that there was as many as fifty-one (51) children (G-26) at any one time and she also testified (Vol. 7, P. 457, lines 11-17) that Mrs. West would get her information directly from her.

The Defendant requests that based on the facts previously mentioned on Count 2 that the Court reverse itself or grant a new hearing. One must be found guilty beyond a reasonable doubt. There obviously is reasonable doubt associated with Count 2 and judicial error of refusing to recognize that all witnesses impeached themselves.

Another note of importance was the amount of money spent by the Defendant (G-16) on Count 2, which was $2,753.65 and the amount received by the Defendant from the State Department of Education, which was $2,206.12 (G-51A). The Defendant, therefore, paid out more money than he received, i.e., $547.53.

COUNT 4: - January, 1980 and COUNT 12; - September, 1980 - The Defendant was found guilty on these counts because of

the CCP-4A(G-18) was filled out in his own handwriting. (Op. P. 24) One cannot be found guilty merely because he did not have a secretary to fill out two (2) of twelve (12) documents. If there were some inconsistencies in the two (2) documents as opposed to the other ten (10), one might assume foul play, but there was no inconsistencies. Can this be justice? The Defendant says NO; this is gross abuse of our system of justice. The records clearly reflect that beginning September, 1975 (vol. 6, P. 250, line 1) Evelyn Henry worked as secretary for the Defendant through October 1979 (Vol. 6, P. 254) lines 3-5); beginning November 1, through December, 1979 Ruth K Bell Cash (Vol. 7, P. 330, lines 5-9) worked as secretary; for the month of January, 1980 (Count 4) Jennings had no secretary, therefore he filled the CCP-4A form out without any hidden ulterior motives; beginning February - June, 1980 (Vol. 7, P. 341, line 24) Alice Lowall worked as secretary, beginning June, 1980 - January, 1981 Jackie Hart worked as Secretary.

If the Defendant was found guilty of filling a document out in his own handwriting (Op. 24) rather than hiring a secretary; then the Defendant asks that this Court reverse itself or grant a new hearing.

The Defendant also states that the only reason he was convicted on the two (2) counts was because of his handwriting which reflects back to the summary charts conclusion that the Defendant inflated his meal count by 21.18 (Exh. G-49A) servings per meal, thereby inferring that anything reported by the Defendant was inflationary. This is not to say, however, that the jury actually referred to any particular figure, but instead, the summary chart left such an overwhelming impression upon the minds of the jurors, until there was no doubt as to his guilt on the two (2) counts, simply because he submitted the reports in his own handwriting.

This Court, in all fairness must reverse itself. Helen Knight contradicted her oral testimony which was a projection of no more than Thirty-Seven (37) children (Vol. 7, P. 429, line 26) at any given time, and she followed that with a menu supposedly being correct and actual and prepared by her which indicates that there were as many as Fifty-One (51) children (Vol. 7, P. 404, line 25) on some days during September, 1980 (Count 12). She also

testified that she had deflated the head count by Fifteen - Sixteen (15-16) on the menu sheet for September, 1980 so that she could keep the money received from these children (Vol. 7, P. 462, lines 4-12). The figures that she read in court as to the number of children present during September, 1980, (Vol. 7, P. 404, line 25) should ultimately be increased by Fifteen (15) by her own admissions.

The Defendant respectfully requests that this Court reverse itself.

COUNT 8: May, 1980 - The Defendant was found guilty on this Count (Op. p. 24) because the expert witness on the Defendant's behalf found an arithmetic error of four (4) meals ($1.76) served during the month of May, 1980 (Count 8), which is shown in Exh. D-2. The menus showed, 3,764 meals and the claim for reimbursement showed 3,768 meals served (Exhibit G-22). "To err is human,"[1] and to find one guilty of such an insubstantial amount and to fine him $7,500 and further sentence him to five (5) years in jail for this count, and all counts (total $30,000.00) is not justice, nor does it conform to contract collection regulations for the food program (Exh. F, Sect. 226.9 and Sect. 226.15). This Court should reverse this count. If this count stood alone, not considering the summary charts, it would not even be a case for prosecution.

The Defendant has detailed with meticulous care the counts and its relation to the "[a]mply supported evidence" and therefore, deduced that the evidence, as a whole, was absurd; filled and inaccuracies, contradictions, extensive reasonable doubt, caused illogical conclusions by the jury (Exh. E), and was without basis or substance and this Court should, therefore, reverse these counts (2, 4, 8, and 12) or grant the request for a new hearing.

ARGUMENT NO. 3

THE COURT ERRONEOUSLY CITED AS FACT ELEVEN (11) ENTRIES THAT WERE NOT FACTS IN THE RECORDS, AND THEREFORE, DEPRIVED THE DEFENDANT OF A

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[1]Socrates

FAIR APPEAL HEARING, AND SUBSTANTIALLY PREJUDICED THE DEFENDANT WITH ITS RULING BY REACHING A CONCLUSION LOGICALLY DIFFERENT FROM WHAT CONCLUSION PROBABLY WOULD HAVE BEEN REACHED IF THE ELEVEN (11) ENTRIES WERE THE CORRECT FACTS.

Wrong Fact: The Court stated that three (3) women who served as his legal secretaries Evelyn Henry, Jackie Hart, and Helen Knight were the principal witnesses against Jennings. (Opinion P. 4)

Right Fact: Evelyn Henry (Vol. 6, P. 250, line 1) and Jackie Hart (Vol. 7, P. 349, Line 25) were secretaries and Helen Knight was the Director of the Child Care Center, (vol. 7, P. 394, line 18) not a secretary. (Also Op. 5)

Wrong Fact: The Court stated "[T]ottsville Child Care Center which was owned and operated by Jennings."

Right Fact: The Center was owned by Jennings, but it was operated by a Director (Helen Knight) and at least four (4) other employees (Everett, Major, Davis, and Davis). (Vol. 7, P. 394, lines 7-13).

Wrong Fact: The Court states that "the number represented by the claims for reimbursement was not unknown to Jennings since he stopped by the Center almost every day and had seen the number of children in attendance". (Op. P. 6)

Right Fact: The Court evidently has determined this statement to be true since it was alledged by Ms. Knight (Vol. 7, P. 425, line 10); and the Court therefore has presented that statement as a fact rather than an allegation.

Wrong Fact: The Court stated that "[d]uring the Twenty-Two (22) days summaried in Exhibit 49-A."

Right Fact: The Twenty-Two (22) days reflected on G-49A was incorrect because the first West review for one (1) day should have been ⅓ day also, therefore, the number of days should have been, according to G-49A, 20.67 days, with September reflecting 20 days.

Wrong Fact: The Court stated that "insofar as the documents underlying these summary charts include almost two hundred (200) pages of material." This Court has surmised that the summary charts (G-49A and G-51A) for Tottsville Child Care Center represented voluminous records.

Right Fact: The supporting documents (G-15 - G-26) for G-49A and G-51A represent only 71 pages.

Wrong Fact: The Court stated that "so long as supporting evidence has been presented previously to the jury", assumptions are therefore allowed.

Right Fact: The summary chart G-51A mentions a 10% administration fee of $8,045.07 as an overclaim. This particular line item which reflects 44% of the overclaimed amount shown on this exhibit, has no supporting evidence in records at all. Because SPI was not on trial here and it has not been established that Jennings could not receive a contractual fee from this organization; it cannot be considered as an overclaim. He did not request reimbursement from the SDOE.

Wrong Fact: This Court stated that "Jennings was the complaining witness in this case." (Opinion, P. 15)

Right Fact: This statement was incorrectly made by the trial judge (Vol. 7, P. 432, lines 16-20) and reiterated by this court. This statement can be clarified by the testimony given by Jennings. (Vol. 7, P. 886, lines 13-15)

Line 13 - Tucker: Did you ever threaten to bring criminal
Line 14-ec- - Tucker: -ec-actions against Ms. Hart for what she did at your office?
Line 15 - Jennings: I considered it, but the bank beat me to it.

Wrong Fact: The Court stated that "[E]ven if Jennings had not known of the conviction, it is apparent that he got all the mileage out of it that he could . . ."

Right Fact: Footnote 11, of the Opinion proves that Jennings' Counsel suspected a prosecution and conviction. If Jennings Counsel had received proof of conviction under the discovery order, the mileage would have been greater because they would have been in a position to question her conviction, sentence, fine

and her propensity to do wrong. If discovery had been complied with, the husband's affidavit supporting the Motion for discovery of psychiatric examination of government witness referring to three (3) days in jail and four hundred dollars ($400.00) fine would have been verified.

Wrong Fact: The Court stated that "From the circumstances of this case it is clear that the government could have conceivably called either the USDA auditor or the investigative agent, Brewer to testify . . ." and "McDonald had originally audited SPI and was, therefore, presumably in a position to testify for the government concerning his findings."

Right Fact: It is noted in the Opinion, page 6, that "From October, 1980 through February, 1981, Pace and Shelton, an independent firm, conducted an audit for SPI activities regarding the Child Care Center," "Archie McDonald was assigned to conduct another audit of SPI" for the same time period. Agent Brewer audited records for October, 1979 through September, 1980. It is evident that Archie Mcdonald and Larry Brewer audited two (2) different time periods, hence, drawing two (2) different conclusions, therefore, it was essential that Pace and Shelton, and Archie Mcdonald be allowed to testify. Their testimony would in no way be cumulative or corroborative.

Wrong Fact: The Court stated that "the Modified Allen Charge . . ." (Opinion, P. 23)

Right Fact: Vol. 9, P. 1137, lines 8, 12 and P. 1138, lines 4-6 prove that the trial judge did not give the Fifth Circuit Modified Allen Charge but his personal version of it. The trial judge changed "Majority" to "substantial majority"; changed "a judgment" to "their own judgment" and added, "I realize that you have deliberated for a long period of time, and I realize from your last communication that you felt that you could not reach a verdict."

Wrong Fact: The Court stated that "the jury had deliberated for approximately one day". (Opinion. P. 23)

Right Fact: The jury retired on Tuesday, May 24 at 12:20 p.m. and returned a note to the judge at 10:49 Wednesday, May 25. It took approximately 1½ days and two (2) notes prior to the

note that stated that they could not reach a verdict. (Vol. 9, P. 1138, lines 10 and 11)

Wrong Fact: the court stated that "Nevertheless, insofar as the documents underlying these summary charts include almost two hundred (200) pages of material and substantial amounts of mathematical calculations . . . (Opinion, P. 8)

Right Fact: The Defendant can only interpret that statement as saying that the summary charts represented voluminous records. This is not ture, the supporting documents for summary charts G-49A and G-51A represented only 71 pages for a 12 month period for Tottsville.

Conclusion: This volume of identifiable errors of alledged facts, that this Court perceived as facts of/from the record created a "cumulative effect" (Baines v. United States, 426F. 2d 842.8 (5th Circuit) (1970) of errors and compounding errors in the Opinion that is substantially prejudicial to Jennings, and demands a reversal of this case, or a rehearing. One can only conclude that if this Court had the right facts before it, that this courts' ruling would have been different.

If all the wrong Facts produced this Opinion, consideration of the right Facts would have surely reached a different conclusion. In Baines v. United States, a case rampant with "errors" and "near errors" and dealing with charts, the court ruled that,

> "We have concluded, after a careful study of the records, that the cumulative effect of the district court's errors and near errors requires that a case as close as this case involving a cabaret tax be reversed and remanded for a new trial."

We think the law created in Baines should apply to this case.

ARGUMENT NO. 4

THIS COURT ERRONEOUSLY CONTRADICTED ITSELF IN THE OPINION AND ERRONOUSLY RULED ON MATTERS AFTER THE CONTRADICTION CONTRARY TO BOTH POSITION OF THE ISSUE.

This Court says that the summary charts contained "[s]ubstantial amounts of mathematical calculations," on page 8 of the Opinion, and refutes that by saying that "[w]hen a chart does not contain complicated calculations requiring the need of an expert for accuracy," (Op. P. 12) and the court did determine that there was no need for an expert, thereby, declaring that the charts will not contain complicated calculations. It should, therefore, be brought to the attention of this Court that it made an error in judgement through contradiction. It is determined by Jennings that an expert was definitely needed to do the summary charts as defined by this Court because the summary charts represented substantial amounts of mathematical calculations. Brewer was determined by the Court not to be an expert witness, therefore he should have been disqualified as a witness, and the summary charts stricken from the records. This court should reverse itself based on this fact and most surely when considering this fact and arguments 1 and 2 herein.

CONCLUSION: It is the Defendant's summation of this argument that this Court should reconsider its ruling by reversing itself or grant a new hearing. It is totally mind-boggling for this Court to say in one sentence that the records are voluminous and complicated and therefore requires an expert to testify and on the other hand to say that Brewer is not an expert and that he may testify to the documents because the charts are not complicated and represented voluminous material. Surely a rehearing and most definitely a reversal would clear up this contradiction.

ARGUMENT NO. 5

THIS COURT ERRONEOUSLY FOUND THAT THERE WAS "[N]O PREJUDICIAL ERROR"; TRIAL COURT ABUSE OF DISCRETION, AND MISUSE OF THE LAW.

The Defendant believes that if certain things **had been done or had not been done in order to preserve time for the court and jurors,** a different result would have arisen out of this trial. The Defendants substantial rights has been denied because of questionable discretionary rulings by the judge.

The Defendant recognizes the fact that this Court can only address itself to what was presented to them; but it is the Defendant's intention here to make certain things brought out in the Opinion, clearer.

The Court found "[n]o prejudicial error in the conduct of the trial below, Jennings conviction is affirmed." (Opinion, P. 2). Jennings was prejudiced by the misuse of summary charts as allowed by the trial court. These summary charts were illogical in its preparation, therefore, inaccurate in its calculations, lacked supporting evidence or documents for some line items; and the most crucial point of all is the impression of actuality, accuracy or that if the Defendant's worksheets did not coincide with the summary charts, they were indeed wrong.

This Court states that "[r]ecognizing the possibility for misuse of summary charts, this Court has previously cautioned that a trial judge must carefully handle their preparation and use." "We here reiterate that caution." (Opinion, p. 8) The Defendant requests that this Court take another look at this particular portion of the record and determine as the Defendant has that the handling and preparation of these Charts were not done cautiously, (Vol. 8, P. 678, lines 19-25 and Vol. 8, P. 701, lines 6-7) and therefore, had an adverse effect on the jury. The Defendant requests that this Court reverse itself or grant a new hearing on this case. (See Argument No. 1 and 2).

This Court stated that Jennings had requested the trial court to strike Jackie Hart's testimony because of the prosecutor's failure to comply with the Court's Order. "The trial court denied the Motion." (Opinion, P. 14) The Defendant says this was an abuse of discretion by the trial judge. It is the law that a convicted felons' record be presented to the Defendant's counsel before trial upon request. The trial court abused its discretion by allowing the prosecutor to proceed with the witness, Jackie Hart, without complying with the Court's Order of discovery. (See Argument No. 3)

This Court stated that "as the trial court observed", "it was obvious from defense council's questioning of the witness that they had known about this conviction and the details of it". 'It is apparent that he got all the mileage out of it that he could . . ."

This court has drawn a conclusion here which certainly is substantially prejudicial to the defendant; and was not supported by evidence.

The trial court abused its discretion when it created its own version of the Modified Allen Charge (Vol. 9, P. 1195) (Opinion, P. 23).

The trial court committed reversable error, and error highly prejudicial to the substantial rights of the Defendant by telling the jury that . . . "If a **substantial** majority, or even a lessor number of you are for acquittal . . ." (Vol. 9, P. 1137, lines 8 and 9).

Conclusion: The Defendant has shown obvious judicial errors made by the trial court, and respectfully requests a reversal of this case by this court. This case represents a gross misuse of the law. The law is not an instrument that can be molded at will by trial judges without regard to firm precedents already set by Courts; which are to be used as a guide for things to follow. The trial judge said to the jury that "It is your duty to agree upon a verdict if you can do so without surrendering your conscientious convictions." and "You may be liesurely in your deliberations as the occasion may require . . ." and the judge follows with an added time pressure statement, on the other hand, which says in direct contrast to the previous statement that "I realize that you have deliberated for a long period of time." (Vol. 9, P. 1138, lines 4 & 5).

If the trial court judge had not given an Allen type charge he would have "declared a mistrial before lunch," (Vol. 9, P. 1129, line 16).

The Defendant's trial was obviously hastened to the point of injustice and justice demands a reversal of this case based upon the cumulative effect of the "misses" and "near misses" (Baines v. United States 5th Cir. 1970, 126 F. 2nd) regarding the judge's discretion and abuses thereof.

ARGUMENT NO. 6

THE COURT ERRONEOUSLY FOUND THAT THERE WAS "NO MISUSE OF THE CHARGE UNDER THE FACTS OF THE CASE," AND THAT THE MODIFIED ALLEN CHARGE GIVEN BY THE TRIAL JUDGE WAS THE SAME ONE APPROVED BY THE FIFTH CIRCUIT, AND THAT THE "JURY'S VERDICT WAS WITHOUT RHYME OR REASON." (OPINION, P. 24)

This Allen-type Charge which was supposedly approved by the Fifth Circuit was misused by the trial court because of an apparent need for expediency by the court, which was determined from the dialogue of the court to counsellors in chambers and to the jury while giving instructions. (Vol. 9, P. 1111, lines 5-17).

In giving the Allen Charge, the trial judge prejudiced the Defendant because of time pressure statements (U.S. v. Taylor, 430 F. 2d 49 (5th Circuit, 1976) as "When a jury is in a case which has lasted as long as this one . . ." (Vol. 9, P. 111, lines 8-9).

This Allen type charge given by the trial court was an instrument of coercion because the judge intimated that it was their (jury) "duty to decide" (Government of the Canal Zone vs. Fears, 428 F. 2d 641 (Fifth Circuit, 1976) by saying "that's the effort of the jury at this point, is what your duty is, to try to reach a verdict," (Vol. 9, P. 1111, lines 12 and 13).

The trial court also erred when instructing the jury prior to the Allen Charge that "to try to resolve the matter one way or the other," "when juries have spent this much time on the case;" "It is late here in this day," and "you've had a long hard day," (Vol. 9, P. 1111, line 17), "go back and see whether a few minutes will make a difference to you as a whole, and if so, then it will be resolved tonight". These statements made by the trial judge represent threats of marathon deliberations and coercive deadlines. (U.S. vs. Cheramie, 520 F. 2d 325, 331 (5th Circuit, 1975)

This rule that the judge should not inquire of the jurors as to how they are numerically divided is a rule of federal procedure (U. S. vs. Cheramie, cert. denied 449 U.S. 1126, 101 S. Ct. 944,

67, L. Ed. 2d 112, one judge dissenting), and this rule was broken by the trial judge when he stated that "I do not want any indication as to any division or numerical division among you **at this point** because that would be improper, but I would ask you whether or not, *under these circcumstances,* any of you think it might be **profitable** for you to go back in deliberation for another few minutes . . . whether that might resolve the issue **tonight**?" (Statement of time pressures) (Vol 9, P. 1112, lines 13-19.)

The trial judge further prejudiced the Defendant by referring to his case as "this thing" (Vol. 9, P. 1114, line 20) without the slightest regards to the impact of the remark on the jury. The trial judge did not give any instructions to the jury as to the intent of such a remark. Nordmann v. National Hotel Company 425 F. 2d 1104 (1970). It is a law that a trial judge may not give the jury his views. The Defendant asks that this case be reversed because he was prejudiced by the trial court.

In Vol. 9, p. 1135, lines 5-15, the trial judge modified the Allen Charge by adding the word "substantial" so that it may "correspond with the first sentence of the fourth paragraph." The Defendant objects to that change because it changed the text of the approved version by the Fifth Circuit. The connotation of the original version "if a majority or even a lesser number of you are for acquittal" (The Fifth Circuit Pattern Instructions) means that if seven (7) or a lesser number of the jury is for acquittal; the modified version by the trial judge "if a **substantial** majority . . ." means some number higher than seven (7) or a lesser number of the jury is for acquittal . . ." It is not the discretion of the trial judge to change the context of the law. The trial judge did not say what number between seven (7) and eleven (11) to use as a substantial majority, and it should have been under this circumstance.

The trial judge interjected into the Allen Charge that he realized that they (the jury) "deliberated for a long period of time," which is a clear contradiction of what the Allen Charge had implied prior to that statement, (Vol. 9, P. 1138, lines 4-6) which was "You may be as leisurely in your deliberations as the occasion may require and should take all the time which you feel is

necessary." This is another example of threats of marathon deliberation and coercion.

It is the Defendant's conclusion that the Allen Charge was misused by the trial court to the extent of prejudice by way of time pressure statements, coersive tactics, and altering the law. The Defendant also concludes that because the judge and the jury have two (2) separate and distinct roles, that they must each be held accountable for that role; especially when their actions and/or reactions beget a final and firm conclusion regarding one's future life. In U.S. vs. Cheramie (Fifth Circuit) 520 F. 2d 333 (1975), a case remarkably similar, the following law was created:

> "Our jury system depends on the continued maintenance of the separate roles of judge and jury, out of which division lawful and responsible verdicts emerge. It is the blurring of these dual duties which we must avoid. But in preserving these respective spheres, we remember that a trial is a truth-finding tool, basic to our ordered society, and not a game of blind man's bluff. We guard against not only forced but also unintelligent jury verdicts. "As such, the judge must be informative and helpful, without being oppressive or dictatorial".

The Defendant, therefore, requests that this court reverse itself or grant a new hearing.

CONCLUSION

For the foregoing reasons and authorities, this Court should grant this Petition for Rehearing, and reverse its earlier judgment affirming the judgment of the district court. This court is being asked to do what jurors should do when considering the evidence in a trial and that is to weigh that evidence and/or facts of the case and if there is any reasonable doubt, the affirmation should be reversed.

Therefore, due to page limitation, the issues of this case will not be reiterated here because they have been amply addressed in this brief by the facts and authorities.

The Defendant respectfully requests this Court to carefully consider this Petition for Rehearing and resulting therefrom, reverse itself.

Respectfully submitted, this the 16th day of February, 1984.

MELVIN R. JENNINGS, PRO SE

REVISED G-48 SUMMARY CHARTS BY JENNINGS
AS TO MATHEMATIC ERRORS AND STATEMENTS

G-48

September, 1980 Breakdown by Centers

	BRI	LU	SU	AVERAGE MEALS
Jones	398	398	396	
Bryant	326	326	326	
Clairmont	562	562	562	
Keyboard	352	355	342	
Miller	504	504	504	
Tottsville	1397	1400	1388	63.39 (Brewer)
				*63.41 (Jennings)
	3539	3545	3518	
	3539	3545	3518	

Amount claimed Per Tottsville Worksheet (G-26) (Brewer) $ 2,795.78
*Amount claimed Per Tottsville Worksheet (G-26) (Jennings 2,794.78

Warrant for September, 1980 Claim (G-14A) (To Whom) (Brewer) 6,621.95
*Warrant for September, 1980 Claim (G-14A) (SPI) (Jennings) 6,621.95

Total Average Meals Claimed on Tottsville Worksheets (Brewer 711.57
*Total Average Meals Claimed on Tottsville Worksheets (Jennings) 730.00

Total Food Amounts Claimed Reflected on Tottsville Worksheets (Brewer) 28,278.54
*Total Food Amounts Claimed Reflected on Tottsville Worksheets (Jennings) 3,989.54

Total of Warrants Paid on Claims (To Whom) (Brewer 80,450.07
*Total of Warrants Paid on Claims (SPI) (Jennings) 80,450.07

*The revisions made by Jennings on Brewer charts are merely corrections of inaccurate calculation; and obvious errors of fact. These corrections does not mean that the Defendant is in agreement with Brewer as to its conclusions.

EXHIBIT A

REVISED G-49A SUMMARY CHARTS BY JENNINGS
AS TO MATHEMATIC ERRORS AND STATEMENTS

G-49A

Tottsville Meals Claimed Compared with Meals served
for October, 1979 through September, 1980

	BREWER	JENNINGS
Total of Average Meals from G-48	711.57	730.00*
711.57 by 12 = 59.29 (Brewer) 730.00 by 12 = 60.83 (Jennings) Average number children claimed to have been served per meal		

	Verified Meals Served	Claimed	Overclaimed
Most on Site Review (G-35) 1 day (Brewer)	40	64	24
*Breakfast .33 1/3 day (Jennings)		(Jennings)	24 @ .4410=10.58
Most on Site Review (G-36) 1 day (Brewer)	32	64	32
*Snack .33 1/3 day		(Jennings)	32 @ .2669=8.54
Menus for September (G-26) 20 days	2460	3802	1342
*(G-26) 22 days (Jennings)		4185	-0-
			1389

1398 by 22 = 63.5 (Brewer) Average Meals overclaimed per day
*1398 by 22.67 = 61.67 (Jennings) Average Meals overclaimed per day

63.55 by 3 (Meals) Brewer = 21.18 Average per meal overclaim
*61.67 by 3 (Meals) Jennings = 20.56 Average per meal overclaim

59.29 - 21.18 = 38.11 (Brewer) Average Actual Meals Served
*60.83 - 20.56 = 40.27 (Jennings) Average Actual Meals Served

*The revisions made by Jennings on Brewer charts are merely corrections of inaccurate calculation; and obvious errors of fact. These corrections does not mean that the Defendant is in agreement with Brewer as to its conclusions.

EXHIBIT B

ORIGINAL G-50 SUMMARY CHART

G-50

TOTTSVILLE FOOD PURCHASES AS REFLECTED ON WORKSHEETS (G-15 THRU 26)

OCTOBER, 1979 (G-15)	$ 408.60
NOVEMBER, 1979 (G-16)	516.06
DECEMBER, 1979 (G-17)	270.96
JANUARY, 1980 (G-18)	316.32
FEBRUARY, 1980 (G-19)	413.03
MARCH, 1980 (G-20)	410.59
APRIL, 1980 (G-21)	332.84
MAY, 1980 (G-22)	419.09
JUNE, 1980 (G-23)	79.95
JULY, 1980 (G-24)	168.78
AUGUST, 1980 (G-25)	303.57
SEPTEMBER, 1980 (G-25)	349.75
	$3,989.54

TOTAL BREAKFAST/LUNCHES CLAIMED FOR TOTTSVILLE (G-15 thru 26)

= 30, 528

$3,989.54 by 30,528 = 13.1¢ AVERAGE COST PER MEAL

EXHIBIT C

REVISED G-51A SUMMARY CHARTS BY JENNINGS AS TO MATHEMATICAL ERRORS AND STATEMENT

G-51A

CLAIMED REIMBURSEMENT COMPARED TO ACTUAL
MEALS SERVED (TOTTSVILLE)

MONTH	PAID (BREWER) REIMBURSEMENT	BREWER CALCULATION FORMULA	REIMBURSEMENT (BREWER) ENTITLE TO	JENNINGS CALCULATION FORMULA	REIMBURSEMENT (JENNINGS) ENTITLED
Oct. 1979	$ 2,352.87	(22x38.11x1.7320)	= $ 1,452.14	22x40.27x1.7255	= 1528.69
Nov. 1979	2,206.12	(20x38.11x1.7320)	= 1,320.12	20x40.27x1.7320	= 1394.95
Dec. 1979	1,892.48	(20x38.11x1.7320	= 1,320.12	20x40.27x1.7320	= 1394.95
Jan. 1980	2,155.57	(22x38.11x1.7981	= 1,507.55	22x40.27x1.7981	= 1593.01
Feb. 1980	2,758.32	(21x38.11x1.7981	= 1,439.03	21x40.27x1.7981	= 1520.60
Mar. 1980	2,402.96	(21x38.11x1.7981	= 1,439.03	21x40.27x1.7981	= 1520.60
Apr. 1980	2,484.15	(22x38.11x1.7981	= 1,507.55	22x40.27x1.7981	= 1593.01
May 1980	2,642.09	(22x38.11x1.9125	= 1,603.47	22x40.27x1.9125	= 1694.36
June 1980	2,206.39	(22x38.11x1.9125	= 1,603.47	21x40.27x1.9125	= 1617.34
July 1980	2,235.66	(22x38.11x2.00)	= 1,676.84	22x40.27x2.00	= 1771.88
Aug. 1980	2,147.15	(22x40.27x2.00)	= 1,676.84	21x40.27x2.00	= 1691.34
Sep. 1980	2,794.98	(22x38.11x2.00)	= 1,676.84	22x40.27x2.00	= 1771.88
	$ 28,278.54		$18,223.00		$19,092.61

TOTAL OVERCLAIM (28,278.54 - 18,233.00) (Brower) 10,055.54
(28,278.54 - 19,092.61) (Jennings) 9,185.93

10% Administration Fee Brewer 8,045.07
10% Adminsitration Fee This was not Paid by the State Department of Education (Jennings) -0-

Total for Jennings for Administrative Fee and Tottsville Overclaim (Brewer) 18,100.61
Total for Jennings for Administrative Fee and Tottsville Overclaim 9,185.93

EXHIBIT D

38.11 x Number of serving days per month x reimbursement rate for each meal.

(Brewer) Sum of three (3) meals served and cash in lieu of commodities = reimbursement entitle to.

*40.27 x Number of serving days per mont x reimbursement rate for each meal + cash in lieu of commodities = reimbursement entitled to. (Jennings)

(Brewer) (Example: October, 1979)

38.11 x 22 = 838.42
838.42 x .4410 = 369.74 (Breakfast)
838.42 x .8759 = 734.37 (Lunch)
838.42 x .2576 = 215.98 (Snack)
838.42 x .1575 = 132.05 (Cash in lieu of commodities)

369.74	1,320.09
734.37	132.04
215.98	
1,320.04	1,452.14

(Jennings) (Example: October, 1979)

40.27 x 22 = 885.94
885.94 x .4393 = 389.19
885.94 x .8719 = 772.45
885.94 x .2568 = 227.51
885.94 x .1575 = 139.54

389.19	1,389.15
772.45	139.54
227.51	
1,389.15	1,528.69

* The revisions made by Jennings on Brewer charts are merely corrections of inaccurate calculation; and obvious errors of fact. These corrections does not mean that the Defendant is in agreement with Brewer as to its conclusions.

EXHIBIT D

Two Jurors Claim Verdict In Jennings Case Not Unanimous

Rev. J.L. Brown, Utica branch NAACP President is spearheading a drive to make Black Jurors aware that they can disagree with the conclusions of other jurors. Mrs. Rachel Stokes told Brown jury decision in Jennings case was "wrong".

Under circumstances remarkably similar to those reported by Black jurors in the trial of former Tchula Mayor Eddie Carthan, two young housewives who served on the jury in the U.S. Government's case against Jackson attorney Melvin Jennings May 16, reported this week that the jury in Jennings' case never reached a unanimous verdict. They contend that jurors agreed to a compromise verdict after two white female jurors took the lone Black male juror "into a corner for thirty minutes or more" and, they believe, convinced him to join the whites, who at that point were united in maintaining a 6-6, white vs Black impasse.

"After they finished with him, (the Black male juror) the vote was 7-6 for conviction," Mrs. Rachel Stokes, one of the jurors said.

After Carthan's assault trial, several jurors said they were misled; one juror, Cornelius Brooks, called the Carthan conviction "a conspiracy from beginning to end; the jurors were confused, tricked and misled," Brooks said.

Jennings was sentenced to four months in prison and fined $30,000 by Judge William Barbour May 25, ten days after the trial began. Jennings' license to practice law was also suspended.

On a related matter, a document was filed in federal district court by Jennings' attorneys charging that a sexual relationship existed between a U.S. Dept. of Agricultural investigator and a witness against Jennings, Helen Knight. The document also alleges that an auditor asked for bribes in order to report favorably on the Jennings day care centers.

"I knew I was doing wrong when I signed my name to the sheet to convict Mr. Jennings," Mrs. Rachel Stokes, a Utica housewife and an employee of a garment factory, said Monday. "I cried," she added. Mrs. Stokes said she was also suspicious of the truthfullness of a principal witness in Jennings' case, Helen Knight. "She said she was out to get Jennings before he got her," Mrs. Stokes said.

Mrs. Stokes' contention was supported by Mrs. Pamela Winston of Jackson. "We agreed to take the highest number of votes for guilty or innocent on each count and then all of us agreed to vote that way," she said.

Mrs. Stokes also stated that at one point the jurors voted 11-1 to declare Jennings innocent on all charges. "There was one white woman who said she'd stay there forever before she would see Mr. Jennings go free."

EXHIBIT E

Another juror said: "The government is always right," Mrs. Stokes contends.

"When the judge asked us if we could put aside racial prejudice in the case, most of those white jurors perjured themselves," Mrs. Winston said, "They were evermore prejudiced."

Both women say the jury was equally divided along racial lines during most of the deliberations, the six whites voting to convict, the 6 Blacks voting the opposite.

Mrs. Stokes said the impasse was broken when Judge Barbour invoked the Allen rule, also call "the dynamite charge." Barbour told the jurors that the trial had been expensive to the government and suggested that no future jury could reach a better verdict than they. Mrs. Stokes said Barbour "suggested that the jurors compromise, thats what we did. It was wrong."

Because of her anger at how Black jurors "were duped" in the Jennings case, Mrs. Stokes went to Utica NAACP president Rev. J. L. Brown. She told Rev. Brown about her problems with the Jennings decision. Brown advised Mrs. Stokes to, "expose the situation to the world."

But Mrs. Stokes was advised by a white attorney to say nothing, Rev. Brown said. Mrs. Stokes family also opposed her talking about the case.

"I thought about how I would feel if I was in Mr. Jennings' shoes," Mrs. Stokes said, "that's why I'm talking now. It was wrong."

Several other questions have been raised about the Jennings case by his attorney Johnny Walls of Greenville. In a document filed in the Jackson Division of the United States District Court, Southern District of Mississippi, Walls raises the question of "outrageous governmental conduct and vindictive and selective prosecution of the defendant (Melvin Jennings).

The document avers that had Jennings been afforded an evidentiary hearing (which was denied by the Court) he (Jennings) could have ,produced witnesses to support his contentions that he had done no wrong.

The document lists individual witnesses and what their testimony would have been had the evidentiary hearing been allowed. The document contends that Jennings would have testified that:

.the State Department of Education, Food Service Division, under the direction of John H. Walker, initiated an audit through Page and Shelton, Certified Public Accountants; that said audit report raised questions about a contract between South People, Inc. and the various child care centers which provided for a ten percent (10%) administrative fee for services rendered as a sponsor.

.he disagreed with said audit report and expressed his disagreement in the form of a letter and by telephone and personal contact;

.Therefore John L. Walker undertook a campaign to harass and discredit South People, Inc. by ordering reviews of the programs of the centers sponsored by South People, Inc. on a near daily basis; furthermore, the confidence of the owners of the various child care centers was undermined, and they were encouraged to drop South People, Inc. as a sponsor;

.Thereafter Archie McDonald undertook an audit of the books and accounts of South People, Inc. on behalf of the Office of the Inspector General (OIG);

.During the audit, Archie McDonald stated to him that he did not conduct his investigations as other investigators and would take as little as Six Hundred Dollars ($600.00) to write a favorable report. He (Jennings) informed Mr. McDonald that South People, Inc. had done nothing wrong, was doing nothing wrong and under no circumstances would ever consider paying a bribe to any public official for favorable treatment. Mr. McDonald said to him that there was always something wrong in every Federal program, and that South People was no exception and that he would prove it; That said Archie McDonald never prepared a report of his alleged "audit;"

.That Walker, shortly thereafter caused a Special Agent of the Federal Bureau of Investigation, Sarah E. McCraine, to visit his office and interrogate him about an alleged false food receipt; he determined from his discussion with her that Walker had sent the Federal Bureau of Investigation (FBI) to his office as a further technique of terrorizing and harassing him and South People, Inc. He then informed her that she and her department were being used by the State Department of Education; she stated that she was not aware of a simultaneous audit being conducted by USDA and OIG; she left his office and has not been heard from since;

.That as owner of Tutleville Child Care Center, he submitted, through South People, Inc., monthly reports for reimbursement of monies spent by him on food and Food Service for the months of October, 1981 through June, 1982, in the total amount of $10,304.13. But DOE has refused to reimburse him in accor-

EXHIBIT E

dance with the contract;

.That agents of the United States Government, disguising themselves as auditors, illegally, unlawfully searched and seized his property, including documents which had no relation whatsoever to the child care Food Program in an effort to manufacture criminal charges against him which would ultimately destroy his career and effectiveness in the Black community;

.That specifically in August, 1981, an Auditor of U.S.D.A., Archie McDonald, commenced an investigation under the guise of an audit with respect to his Day Care Centers;

.Subsequent thereto, Special Agent Larry Gold Brewer, was assigned to undertake a criminal investigation to determine whether he (Jennings) was guilty of criminal fraud, under the guise of an audit;

.That he now knows that the audit was in fact a criminal investigation being conducted for the purpose of collecting evidence to be used against him in a criminal prosecution, and that the true nature of the investigation was intentionally concealed from him. At no time did he voluntarily give to the agents any of his books, records, and other papers for purpose of a criminal investigation, nor did he voluntarily waive any rights granted to him by the Constitution of the United States;

.In fact many of his records were stolen and taken without his knowledge;

.That though hundreds of day care centers are operated in the State of Mississippi providing meals for children under the Child Care Food Program; that only Black people have been prosecuted for alleged violations hereunder; that the same governmental forces and agents involved in the prosecution of defendant herein have also been involved in the discriminatory indictments and prosecutions of other Black people;

.That the economic, political and governmental powers that be in the United States and particularly in Mississippi, have sought to discredit and exploit Black professionals and public officials in an endeavor to depict them as incompetent, irresponsible, unlawful and corrupt;

.That Larry Gold Brewer, Chief Investigator and Special Agent with OIG procured false testimony before the grand jury by offers of monetary rewards. In addition, he engaged in an illicit sexual affair with the government's "star witness" for purposes of influencing her testimony, among other reasons:

.That the Federal Bureau of Investigation (FBI) has tapped his telephone, spread malicious and false rumors about his intent to do bodily harm to potential witnesses, intimidated and harassed parents of children who were enrolled in his Day Care Center, as well as other people having knowledge of the true facts of the case; that FBI agents hav procured the assistance of persons to come to him who were wired for sound with the intent of leading him to make admissions against his interest;

LARRY GOLD BREWER

.He was expected to testify that he is a criminal investigator for the OIG; that on or about May, 1982, he undertook an investigation of South People, Inc. and the defendant, and in that connection, visited the defendant's office and obtained numerous documents; however, at no time did he inform the defendant that he was conducting a criminal investigation;

.That he did not obtain a subpoena or search warrant and did not ever advise the defendant of his Miranda rights; and;

.That the evidence he seized was presented to the Grand Jury for purposed of obtaining an indictment;

ARCHIE MCDONALD

.Archie McDonald was expected to testify as follows: That he conducted an audit of the records and account of South People, Inc. beginning in October, 1981; That he took records from the office of South People, Inc. without permission, made copies of them and returned them without anyone's knowledge;

.That he ventured outside the offices, books and accounts of South People, Inc. and interrogated parents of children at the centers and employees of the various centers; That he turned over applications he obtained in his "audit" to Larry Brewer, a criminal investigator of OIG; and that he never informed the defendant that he had referred the matter for criminal investigation;

W.C. BATTLE

.W.C. Battle would have been expected to testify that Helen Marie Knight (the government's star witness) was offered a $5,000 reward in exchange for her testimony against the defendant; that she agreed to testify and believed she was going to get the money; That he was threatened by the FBI because of his

EXHIBIT E

relationship with Helen Marie Knight; that he was stopped on the streets several times and picked up by them; that he was interrogated about the defendant and sent to the home of the defendant to talk to him; that he does not know why he was sent, but he went and did not inform the defendant that he had been sent by FBI agents.

Continued Next Week

Selective Prosecution Eyed In Jennings Case

The questions arising out of the Melvin Jennings conviction impact on Black people in Mississippi from both a historical and current perspective. While the great similarity between the Jennings case and that of former Tchula mayor Eddie Carthan are immediately apparent, the historical parallels have aroused a deep curiosity in a former United States Attorney General, Ramsey Clark.

The issues raised by Jennings lawyers, Ramsey Clark and in a historical sense, activist Ken Lawrence, center around the fact that the state's judiciary almost totally excludes Blacks.

Lawrence points out that the overthrow of the First Reconstruction was directly related to the fact that Mississippi planter class has always maintained control of judicial processes in Mississippi. Lawrence said that a judicial decision rendered by Judge A.J. Peyton in September, 1875, drove the final nail in the coffin of Black equality in Mississippi.

Peyton's decision prevented the state treasurer from funding the state militia headed by Black Hinds County State Senator Charles Caldwell. Peyton said the state could not maintain a militia "since Mississippi is not at war." But Caldwell's militia had protected Black voters at polling places. With Peyton's decision in hand Governor Adelbert Ames disolved the militia. Three months later, Caldwell was murdered by Buck Colsell and the First Reconstruction in Mississippi was over and with it Black freedom.

In the Jennings' case, as in hundreds of others before it, the Black jurors were overwhelmed or misled by the prosecution or their white fellow jurors.

Questions continue about the role of the State Department of Education in Jennings' prosecution and Department of Agriculture procedures which were apparently not followed in Jennings' case:

.Jennings did not receive an administrative hearing as is required under Department of Agriculture regulations. The manual of the Department of Agriculture's Food and Nutrition Services Child Care Food Program states: (a) State agencies shall disallow any portion of a claim for reimbursement and recover any payment to an institution not properly payable under this part. However, the State agency shall notify the institution of the reasons for any disallowance or demand for repayment, and allow the institution full opportunity to submit evidence on appeal as provided for in 226.7(j). Minimum State agency collection procedures for unearned payments shall include: (1) written demand to the institution for the return of improper payments; (2) if, after 30 calendar days, the institution fails to remit full payment or agree to a satisfactory repayment schedule, a second written demand for the return of improper payments sent by certified mail return receipt requested; and (3) if, after 60 calendar days, the institution fails to remit full payment or agree to a satisfactory repayment schedule, the State agency shall refer the claim against the institution to appropriate State or Federal authorities for pursuit of legal remedies.

None of the above steps were taken in the Jennings' case except for the "legal remedies" applied in this case.

.The code of federal regulations pursuant to the Food and Nutrition Service provides that the organization of state agencies charged with overseeing Food and Nutrition Programs shall include an independent audit function: provide a systematic method to assure timely and appropriate resolution of audit findings and recommendations: and provide a plan to monitor. Program performance and measure progress in achieving Program goals.

. The audit of Jennings records was never completed:

.The same section also provides that "State agencies shall disallow any portion of a Claim for Reimbursement and recover any payment made to an in-

stitution that is or was not properly payable under this part. State agencies may use their own procedures to disallow claims and recover overpayments already made."

The State of Mississippi has made no effort to recover money from Jennings because no specific monetary damage has been alleged by the state. Instead Jennings was indicted and prosecuted under a catch-all regulation almost impossible to defend oneself against.

Jennings was suspended from the practice of law under Local rule I of the United States District Court for the Southern District of Mississippi. However several local attorneys feel that Jennings should be allowed to practice pending appeals. The 7th Circuit Court of Appeals ruled in 1972 that:

"If a conviction itself is to be used to show commission of underlying acts which are of such nature as to form basis for disbarment or suspension, conviction must have reached finality, at least to the extent of exhaustion of direct appeals. U.S. Dist. Ct. Rules, N.D. Ill., General Rule 8."

Federal Register / Vol. 45. No. 15 /
Tuesday, January 22, 1980 / Rules and Regulations, Page 4983.

§ 226.15 Claims against institutions.

(a) State agencies shall disallow any portion of a claim for reimbursement and recover any payment to an institution not properly payable under this part. However, the State agency shall notify the institution of the reasons for any disallowance or demand for repayment, and allow the institution full opportunity to submit evidence on appeal as provided for in § 226.7(j). Minimum State agency collection procedures for unearned payments shall include: (1) written demand to the institution for the return of improper payments; (2) if, after 30 calendar days, the institution fails to remit full payment or agree to a satisfactory repayment schedule, a second written demand for the return of improper payments sent by certified mail return receipt requested; and (3) if, after 60 calendar days, the institution fails to remit full payment or agree to a satisfactory repayment schedule, the State agency shall refer the claim against the institution to appropriate State or Federal authorities for pursuit of legal remedies.

(b) In the event that the State agency finds that an institution which prepares its own meals is failing to meet the meal requirements of § 226.21, the State agency need not disallow payment or collect an overpayment arising out of such failure if the institution takes such other action as, in the opinion of the State agency, will have a corrective effect.

(c) If FNS does not concur with the State agency's action in paying an institution or in failing to collect overpayment, FNS shall notify the State agency of its intention to assert a claim against the State agency. In all such cases, the State agency shall have full opportunity to submit evidence concerning the action taken. The State agency shall be liable to FNS for failure to collect an overpayment, unless FNS determines that the State agency has conformed with this part in issuing the payment and has exerted reasonable efforts to recover the improper payment.

EXHIBIT F

§ 226.9 Audits.

(a) In accordance with the Plan submitted under § 226.6(b), the State agency shall provide for audits at the State and institution levels of Program funds, payments and operations. Such audits shall be conducted at least once every 2 years for each institution. Organization-wide audits of institutions receiving other Federal funds may be counted toward meeting this requirement. The audits shall determine the fiscal integrity of financial transactions and reports, and compliance with applicable laws and regulations. Audits may be made by: (1) State agency internal auditors; (2) State Auditors General; (3) State Comptrollers Office; (4) other comparable State or local audit groups; (5) certified public accountants; (6) public accountants licensed on or before December 31, 1970, currently certified or licensed by the regulatory authority of the State or other political subdivision of the United States.

(b) Except with the written approval of FNSRO, State agencies shall not permit institutions either to select an auditing firm or to disburse funds provided to the State agency for the conduct of audits under § 226.4(h).

(c) In conducting audits during any fiscal year, the State agency shall establish priorities for using the funds provided for in § 226.4(h) first to meet the fiscal audit requirements outlined in this section. Costs pertaining to such audits shall not be borne in whole or in part by the institution. Such audits shall be fiscal audits conducted in accordance with the Department's guidelines. After fulfilling the audit requirements, any remaining funds may be used by the State agency during the fiscal year for which the funds are allocated to conduct administrative reviews of program operations in institutions. If the funds provided under § 226.4(h) are not sufficient to meet the requirements of this section, the State agency may use available State administrative expense funds to conduct audits.

(d) Use of audit guides available from OIG is encouraged. When these guides are utilized, OIG will coordinate its audits with State sponsored audits to form a network of intergovernmental audit systems.

(e) In making management evaluations or audits for any fiscal year, the State agency or OIG may disregard any overpayment which does not exceed $35 or, in the case of State agency administered programs, does not exceed the amount established under State law, regulations or procedures as a minimum amount for which claims will be made for State losses generally. No overpayment shall be disregarded, however, where there are unpaid claims of the same fiscal year from which the overpayment can be deducted, or where there is evidence of violation of criminal law or civil fraud statutes.

(f) While OIG shall rely to the fullest extent feasible upon State sponsored audits, OIG may, whenever it considers necessary: (1) Make audits on a statewide basis; (2) perform on-site test audits; (3) review audit reports and related working papers of audits performed by or for State agencies.

EXHIBIT F

- APPENDIX D -

IN THE

UNITED STATES DISTRICT COURT OF APPEALS

for the

FIFTH CIRCUIT

No. 83-4426

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MELVIN R. JENNINGS

Defendant-Appellant.

Appeal from the United States District Court for the Southern District of Mississippi

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ON PETITION FOR REHEARING

February 29, 1984

Before GEE and GARWOOD, Circuit Judges, and EAST*, District Judge.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby denied.

ENTERED FOR THE COURT:

*District Judge of the District of Oregon, sitting by designation.

W. Garwood, United States Circuit Judge

- APPENDIX E -

IN THE

UNITED STATES DISTRICT COURT OF APPEALS

for the

FIFTH CIRCUIT

No. 83-4426

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MELVIN R. JENNINGS

Defendant-Appellant.

Appeal from the United States District Court for the Southern District of Mississippi

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ORDER:

The motion of appellant for recall and stay of the issuance of the mandate pending petition for writ of certiorari is denied.

The motion of appellant for recall and stay of the issuance of the mandate pending petition for writ of certiorari is GRANTED to and including March 23, 1984, the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within the period above mentioned there shall be filed with the clerk of this Court the certificate of the Clerk of the Supreme Court that the certiorari petition has been filed. The Clerk shall issue the mandate upon the filing of a copy of an order

of the Supreme Court denying the writ, or upon the expiration of the stay granted herein, unless the above mentioned certificate shall be filed with the Clerk of this Court within that time.

W. Garwood, United States Circuit Judge

- APPENDIX F -

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK
GILBERT F. GANUCHEAU
CLERK

March 12, 1984

Mr. Eddie H. Tucker
Attorney at Law
Post Office Box 2169
Jackson, MS 39205

No. 83-4426 - U.S.A. -vs- Melvin R. Jennings

Dear Counsel:

Enclosed is a copy of appellant's notice of appeal to the Supreme Court of the United States, received and filed in this office on March 12, 1984. This document should be attached as an appendix to appellant's jurisdictional statement to be filed with the Clerk of the United States Supreme Court pursuant to that court's Rule 15.1(j)(iv).

Very truly yours,

GILBERT F. GANUCHEAU, Clerk

By George G. Bauer, Jr.
George G. Bauer, Jr.
Case Manager

GGBjr/ml

Enclosure

cc: Mr. Melvin R. Jennings
Mr. James B. Tucker
Mr. Alexander L. Stevas, Clerk

IN THE

UNITED STATES DISTRICT COURT OF APPEALS

for the

FIFTH CIRCUIT

No. 83-4426

UNITED STATES OF AMERICA,

APPELLEE

VS.

MELVIN R. JENNINGS

APPELLANT

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNTIED STATES

Notice is hereby given that MELVIN R. JENNINGS, the Appellant above named, hereby appeals to the Supreme Court of the United States from the final order entered in this action February 29, 1984.

This Appeal is taken pursuant to United States Code Title 28, Section 2101 (f).

This the 8th day of March, 1984.

EDDIE H. TUCKER
Attorney for the Appellant
800 North Farish Street
P. O. Box 2169
Jackson, Mississippi 39205-2169
(601) 948-1120

PROOF OF SERVICE

I, EDDIE H. TUCKER, Attorney for MELVIN R. JENNINGS, Appellant herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on March 8, 1984, I served a copy of the NOTICE OF APPEAL TO THE UNITED STATES SUPREME COURT to Mr. James B. Tucker, Assistant U. S. Attorney, herein, by mailing a copy in a duly addressed envelope, with first class postage prepaid to James B. Tucker, Esq., Attorney of record for the United States of America at P. O. Box 2091, Jackson, MS 39205.

This the 8th day of March, 1984.

EDDIE H. TUCKER
Attorney for the Appellant
P. O. Box 2169
Jackson, MS 39205-2169
(601) 948-1120

END OF DOCKET